District of Columbia Official Code

2001 Edition

TITLES 32 to 34

Labor

Partnerships

Public Utilities

40th ANNIVERSARY
of
HOME RULE


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DISTRICT OF COLUMBIA

OFFICIAL CODE

2001 EDITION

Containing the Laws, general and permanent in their nature, relating to or in force in the District of Columbia (Except such laws as are of application in the General and Permanent Laws of the United States) as of September 13, 2012.

VOLUME 17

Title 32

Labor

to

Title 34

Public Utilities



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Foreword to 2013 Commemorative Set

LexisNexis presents the 2013 republication of the District of Columbia Official Code, 2001 Edition to the D.C. bench and bar and to the citizens of the District of Columbia in a sincere belief that it will prove a material contribution to the orderly and efficient conduct of the government of the District and to the practice of law. LexisNexis is proud to help commemorate the 40th anniversary of Home Rule for the District of Columbia.

LexisNexis continues its tradition of excellence with its District of Columbia Official Code, 2001 Edition. This 2013 Volume 17 replaces any existing Volume 17 of the 2001 Edition and its 2012 Supplement, both of which may now be discarded, recycled, or retained for historical reference. Future supplements will be keyed to this 2013 Volume and not to any of its predecessors.

The District of Columbia Official Code, 2001 Edition, represents the eighth compilation of the laws of the District of Columbia and reflects an extensive renumbering of the 1981 Edition. Users should consult the historical citations at the end of each statute, and corresponding amendment notes, as guides to legislative currency. Research features such as case annotations, section references, effect of legislation notes, editor's notes, and the comprehensive index have been prepared by LexisNexis. Your set is kept up to date through regular supplementation, free access to the on-line Official Code at http://www.lexisnexis.com/hottopics/dccode and the periodic replacement of volumes. All case citations are Shepardized for accuracy and continued relevance. LexisNexis also publishes a District of Columbia Advance Legislative Service (ALS). The ALS gives you the latest session laws as they are passed, along with tables showing you which sections of the Code are affected.

We actively solicit your comments and suggestions. If you have questions or comments about the statutes, or if you have suggestions regarding index improvements, please write to us or call us toll-free at 1-800-833-9844; fax us toll free at 1-800-643-1280; E-mail us at customersupport@bender.com; or visit our website at http://www.lexisnexis.com. By providing us with your informed comments, you will be assured of having a working tool which increases in value each year.

LexisNexis June 2013

PREFACE TO THE 2001 EDITION

The 2001 Edition of the District of Columbia Official Code marks the eighth time that a compilation of the laws of the District of Columbia has been published by, or under the authority of, the government of the District of Columbia or that of the United States. The District of Columbia Code was first published in 1929; eleven years later, the Second Edition (1940) was published; another eleven years later, the Third Edition (1951); ten years later, the Fourth Edition (1961); six years later, the Fifth Edition (1967); another six years later, the Sixth Edition (1973); and 8 years later, the Seventh Edition (1981) was published. The time between the publication of the Seventh Edition and this Eighth Edition represents the longest period, by almost a decade, that the District of Columbia Code has gone unrevised in its 72 year history.

The District's Charter, which in 1973, established the current tripartite government of the District of Columbia, makes it incumbent upon the legislative branch to publish and codify every act of the Council, as the Council directs, upon becoming law, so that the residents of the District may have ready access to the laws by which they are governed. In 1973, however, the framers of the District's constitution could not have foreseen the incredible technological advances that would occur in the next 25 years nor the impact they have on the Code.

With the close of the 20th Century the world has witnessed the triumph of the Information Age, the rise of the World Wide Web, and the explosion of word processing and data storage technology. These phenomena have helped make the reproduction of legal text and data a fast, easy, and inexpensive enterprise, giving rise to a plethora of publishing mediums, and have made it a relatively simple task to reproduce existing legal text, including the District of Columbia Code. The rapid rise of the Computer Age has allowed virtually anyone with an ordinary personal computer to reproduce and compile the laws of the District of Columbia.

The laws of the District, however, are fluid, not stagnant, as they are amended several times each year. The quality and accuracy of publications not directed by the Council are beyond its control. The Council can only warrant the Code for which it has authorized publication. Therefore, in order to ensure that the residents of the District may distinguish between the compilation of District laws as produced under the direction of the elected officials of the District of Columbia and those of other persons, we have added the word "Official" to the title of the Code. Also to ensure that the Council never loses the right to publish its own laws, the government of the District of Columbia has retained the copyright to the District of Columbia Official Code.

The codified laws of the District of Columbia are created as a result of legislative action on the part of 13 individuals elected by the residents of the

District of Columbia to enact the laws that govern the District, and by the Congress. Once the legislative process is complete, the Council, through its delegation of authority to its Office of the General Counsel, codifies the laws in the form of this Code. In the process of codification, the Office of the General Counsel interprets any discrepancies in the drafting of the laws using commonly recognized rules of statutory construction. No other entity is authorized by law to make these determinations. As set forth by federal law and recognized by the Courts of the District of Columbia, this Code establishes prima facie evidence of the laws in force in the District of Columbia.[1] It is this continuity of authority, from enactment to codification to judicial review that gives this Code its authenticity and officiality as the content of the laws of the District of Columbia.

The 2001 Edition represents a recodification of the 1981 Edition in that it contains a reorganization of the presentation of the laws, inclusion of some previously omitted legal provisions, and the omission of non-substantive extraneous provisions. The theory behind the recodification is to purify the organization of the Code which over many decades has seen the haphazard mixing of original ("organic") provisions of laws throughout the Code. In the 2001 Edition, we have established a system of codification that follows the legislative drafting principals established over many years in the Council's Office of the General Counsel.

The recodification is not an overhaul of the Code. Although a cleanup of the antiquated, repealed and omitted provisions is long overdue, it is not the province of the Office of the General Counsel to determine which laws should be expunged as obsolete. Such decisions should be left to a working group commissioned by the Council to recommend revisions to the Code. The Office of the General Counsel has simply separated the organic laws into discrete divisions and topical categories. As much as is possible, we have followed a rule that requires that all organic law remain intact: closely following the layout of the originating act. We have retained notes to repealed sections to aid in legal research and preserved the numbering style that was first introduced in the Second Edition. Thanks to the resourcefulness of the publisher and the Council's Office of the General Counsel staff, we have corrected provisions of law erroneously added to, or deleted from, prior editions.

The Code is organized into eight Divisions of practical law: government organization; judicial organization; decedent estates; criminal law; business law; education; property; and general laws. Each division is subdivided by subject matter called **Titles**, organic laws, called **Chapters** and **Subchapters**, and finally, individual **Sections** representing the individual sections of organic law. Occasionally, **Subtitles** are used to organize chapters of organic law, **Units** to organize subchapters, and **Parts** and **Subparts** to organize the additional divisions within the organic law. One important change that the user will notice, and hopefully appreciate, is that the District's Charter, the Home Rule Act, is codified in its entirety in one location so that the

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1. *See* 1 U.S.C. § 204(b) (1994); *Sheetz v. District of Columbia*, 629 A.2d 515, 519 (D.C. 1993).

framework of the current District government can be readily found. We hope that the organization of the 2001 Edition of the District of Columbia Official Code will serve as a foundation for further refinement by future law revision commissions or their equivalent.

The 2001 Edition has been prepared under the supervision of Benjamin. F. Bryant, Jr., Codification Counsel, Office of the General Counsel, Council of the District of Columbia.

____ /s/_____

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General Counsel

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*Title has been enacted as law.

Title

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*Title has been enacted as law.

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Chapter 1. Displaced Workers Protection.

Sec.
32-101. Covered employees.
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Sec.
32-103. Enforcement.

§ 32-101. Covered employees.

(a) This chapter shall apply to the following employees, except persons employed less than 15 hours per week and except persons employed in an executive, administrative, or professional capacity as defined by the Secretary of Labor under § 13(a)(1) of the Fair Labor Standards Act (29 U.S.C. § 213(a)(1)) or required by District of Columbia law in effect on April 26, 1994, to possess an occupational license:

(1) Employees hired by a contractor as food service workers in a hotel, restaurant, cafeteria, apartment building, hospital, nursing care facility, or similar establishment;

(2) Employees hired by a contractor to perform janitorial or building

maintenance services in an office building, institution, or similar establishment;

(3) Nonprofessional employees hired by a contractor to perform health care or related support services in a hospital, nursing care facility, or similar establishment; and

(4) Employees hired by a contractor to perform security services in an office building, institution, or similar establishment; provided, that special police officers who are armed, and employees hired by a contractor to perform security services for the Board of Education or a public charter school shall not be included.

(b) For the purposes of this chapter "contractor" includes a subcontractor and means an individual or company that employs 25 or more persons.

(Apr. 26, 1994, D.C. Law 10-105, § 2, 41 DCR 1011; June 8, 2006, D.C. Law 16-118, § 402, 53 DCR 2602; Mar. 25, 2009, D.C. Law 17-353, § 114, 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 36-1501.

Effect of amendments. — D.C. Law 16-118 added par. (a)(4).

D.C. Law 17-353 validated a previously made technical correction in the punctuation in subsecs. (a)(1), (2), and (3).

Legislative history of Law 10-105. — Law 10-105, the "Displaced Workers Protection Act of 1994," was introduced in Council and assigned Bill No. 10-307, which was referred to the Committee on Labor. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-193 and transmitted to both Houses of Congress for its review. D.C. Law 10-105 became effective on April 26, 1994.

Legislative history of Law 16-118. — For Law 16-118, see notes following § 32-751.

Legislative history of Law 17-353. — Law 17-353, the "Technical Amendments Act of 2008", was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

Editor's notes. — Mayor authorized to issue rules: Section 5 of D.C. Law 10-105 provided that the Mayor shall promulgate rules to implement this chapter.

§ 32-102. Transition employment period.

(a) The present contractor within a period of 10 days after the awarding of a contract shall make available to prospective contractors the names of all employees of the present contractor employed at the site or sites covered by the prospective contract, the date each employee was hired, and the employee's occupation classification.

(b) A new contractor who is awarded a contract to provide similar covered services provided by the previous contractor shall retain, for a 90-day transition employment period, covered employees who have been employed by the previous contractor for the preceding 8 months or longer at the site or sites covered by the contract.

(c) If at any time, the new contractor determines that fewer employees are required to perform the new contract than were required by the previous contractor, the new contractor shall retain employees by seniority within job classification.

(d) During the 90-day transition employment period, the new contractor

shall maintain a preferential hiring list of eligible covered employees not retained by the new contractor from which the new contractor may hire additional employees.

(e) Except as provided in subsection (c) of this section, the new contractor shall not discharge an employee retained pursuant to this chapter during the 90-day transition period without cause.

(f) At the end of the 90-day transition employment period, the new contractor shall perform a written performance evaluation for each employee retained pursuant to this chapter. If the employee's performance during the 90-day transition employment period is satisfactory, the new contractor shall offer the employee continued employment under the terms and conditions established by the new contractor.

(g) If a contractor's contract at an establishment in the District of Columbia is not renewed, and within 30 days the contractor is awarded a similar contract at another establishment in the District of Columbia, the contractor shall retain at least 50% of the employees from each establishment as needed to perform the contract.

(Apr. 26, 1994, D.C. Law 10-105, § 3, 41 DCR 1011; Apr. 18, 1996, D.C. Law 11-110, § 43, 43 DCR 530.)

Prior Codifications. — 1981 Ed., § 36-1502.

Legislative history of Law 10-105. — For legislative history of D.C. Law 10-105, see Historical and Statutory Notes following § 32-101.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

§ 32-103. Enforcement.

(a) An employee who has been wrongfully discharged by a new contractor may bring an action in the Superior Court of the District of Columbia and may be awarded:

(1) Back pay for each day the violation continues at a rate of compensation not less than the higher of:

(A) The average regular rate of pay received by the employee during the last 3 years of the employee's employment in the same occupation classification; or

(B) The final regular rate received by the employee; and

(2) Costs of benefits the new contractor would have incurred for the employee under the new contractor's benefit plan.

(b) In any suit, the court shall allow the prevailing party reasonable attorney's fees as part of the costs recoverable.

(c) This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

(Apr. 26, 1994, D.C. Law 10-105, § 4, 41 DCR 1011.)

Prior Codifications. — 1981 Ed., § 36-1503.

Legislative history of Law 10-105. — For legislative history of D.C. Law 10-105, see Historical and Statutory Notes following § 32-101.

CHAPTER 1A. EMPLOYEE SICK LEAVE.

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32-131.01. Definitions.
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32-131.16. Applicability.
32-131.17. Appropriations contingency.

§ 32-131.01. Definitions.

For the purposes of this chapter, the term:

(1) "Domestic violence" means an intrafamily offense as defined in § 16-1001(5) [now (8)].

(2)(A) "Employee" shall have the same meaning as provided in § 32-501(1).

(B) The term "employee" shall not include:

(i) An independent contractor;

(ii) A student;

(iii) Health care workers who choose to participate in a premium pay program; or

(iv) Restaurant wait staff and bartenders who work for a combination of wages and tips.

(3)(A) "Employer" means a legal entity (including a for-profit or nonprofit firm, partnership, proprietorship, sole proprietorship, limited liability company, association, or corporation), or any receiver or trustee of an entity (including the legal representative of a deceased individual or receiver or trustee of an individual), who employs an employee.

(B) The term "employer" shall include the District government.

(4) "Family member" means:

(A)(i) A spouse, including the person identified by an employee as his or her domestic partner, as defined in § 32-701(3);

(ii) The parents of a spouse;

(iii) Children (including foster children and grandchildren);

(iv) The spouses of children;

(v) Parents;

(vi) Brothers and sisters; and

(vii) The spouses of brothers and sisters.

(B) A child who lives with an employee and for whom the employee permanently assumes and discharges parental responsibility; or

(C) A person with whom the employee shares or has shared, for not less than the preceding 12 months, a mutual residence and with whom the employee maintains a committed relationship, as defined in § 32-701(1).

(5) "Paid leave" means accrued increments of compensated leave provided by an employer for use by an employee during an absence from employment for any of the reasons specified in § 32-131.02(b).

(6) "Premium pay program" means a plan offered by an employer pursuant to which an employee may elect to receive extra pay in lieu of benefits.

(7) "Sexual abuse" means any offense described in Chapter 30 of Title 22 [§ 22-3001 et seq.]

(8) "Student" means an employee who:

(A)(i) Is a full-time student, as defined by an accredited institution of higher education;

(ii) Is employed by the institution at which the student is enrolled;

(iii) Is employed for less than 25 hours per week; and

(iv) Does not replace an employee subject to this chapter; or

(B) Is employed as part of the Year Round Program for Youth, as established by the Department of Employment Services.

(May 13, 2008, D.C. Law 17-152, § 2, 55 DCR 3452.)

Legislative history of Law 17-152. — Law 17-152, the "Accrued Sick and Safe Leave Act of 2008", was introduced in Council and assigned Bill No. 17-197, which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on February 5, 2008, and March 4, 2008, respectively. Signed by the Mayor on March 19, 2008, it was assigned Act No. 17-324 and transmitted to both Houses of Congress for its review. D.C. Law 17-152 became effective on May 13, 2008.

Editor's notes. — Section 7095 of D.C. Law 17-219 repealed section 18 of D.C. Law 17-152.

§ 32-131.02. Provision of paid leave.

(a)(1) An employer with 100 or more employees shall provide for each employee not less than one hour of paid leave for every 37 hours worked, not to exceed 7 days per calendar year.

(2) An employer with at least 25, but not more than 99, employees shall provide for each employee not less than one hour of paid leave for every 43 hours worked, not to exceed 5 days per calendar year.

(3) An employer with 24 or fewer employees shall provide not less than one hour of paid leave for every 87 hours worked, not to exceed 3 days per calendar year.

(4) For the purposes of paragraphs (1) through (3) of this subsection, the number of employees of an employer shall be determined by the average monthly number of full-time equivalent employees for the prior calendar year. The average monthly number shall be calculated by adding the total monthly full-time equivalent employees for each month and dividing by 12.

(5) In the case of employees who are exempt from overtime payment under section 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 et seq.), employees shall not accrue leave for hours worked beyond a 40-hour work week.

(b) Paid leave accrued under this section may be used by an employee for any of the following:

(1) An absence resulting from a physical or mental illness, injury, or medical condition of the employee;

(2) An absence resulting from obtaining professional medical diagnosis or care, or preventive medical care, for the employee, subject to the requirement of subsection (d) of this section;

(3) An absence for the purpose of caring for a child, a parent, a spouse, domestic partner, or any other family member who has any of the conditions or needs for diagnosis or care described in paragraph (1) or (2) of this subsection; or

(4) An absence if the employee or the employee's family member is a victim of stalking, domestic violence, or sexual abuse; provided, that the absence is directly related to social or legal services pertaining to the stalking, domestic violence, or sexual abuse, to:

(A) Seek medical attention for the employee or the employee's family member to recover from physical or psychological injury or disability caused by domestic violence or sexual abuse;

(B) Obtain services from a victim services organization;

(C) Obtain psychological or other counseling;

(D) Temporarily or permanently relocate;

(E) Take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence or sexual abuse; or

(F) Take other actions to enhance the physical, psychological, or economic health or safety of the employee or the employee's family member or to enhance the safety of those who associate or work with the employee.

(c)(1) Paid leave under this section shall accrue in accordance with the employer's established pay period. An individual shall accrue paid leave when he or she qualifies as an employee.

(2) An employee's unused paid leave accrued during a 12-month period shall carry over annually. An employee shall not use in one year more than the maximum hours as allowed in subsection (a)(1), (2), and (3) of this section, unless the employer chooses otherwise. Unused paid leave accrued under this chapter shall not be reimbursed upon the termination or resignation of any employee.

(3) Repealed.

(4) Upon mutual consent by the employee and the employer, an employee who chooses to work additional hours or shifts during the same or next pay period in lieu of hours or shifts missed, shall not use paid leave; provided, that the employer does not require the employee to work such additional hours or shifts.

(d) An employee shall make a reasonable effort to schedule paid leave under subsection (b) of this section in a manner that does not unduly disrupt the operations of the employer.

(e) If an employee does not suffer a loss of income when absent from work, for the number of days up to the days of paid leave provided for in subsection (a)(1), (2), and (3) of this section, an employer shall not be required to provide paid leave for such employee in accordance with this chapter. Notwithstanding the foregoing sentence, the provisions of § 32-131.08 shall apply to employees who do not suffer a loss of income when absent from work.

(f) If employees of beauty, hair, and nail salons are paid by commission (whether commission only or base wage plus commission), the sick leave rate of pay shall be calculated as follows: divide the employee's total earnings in

base wages and commissions for the prior calendar year by the total hours worked as a commissioned employee during the prior calendar year. If employees do not have a prior calendar year's work history, divide the employee's total earnings in base wages and commissions since the employee's date of hire by the total hours worked as a commissioned employee since that date.

(May 13, 2008, D.C. Law 17-152, § 3, 55 DCR 3452; Mar. 25, 2009, D.C. Law 17-353, § 311(a), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353, in subsec. (c), substituted "when he or she qualifies as an employee" for "at the beginning of his or her employment. An employee may begin to access paid leave after 90 days of service with his or her employer" in par. (1), and repealed par. (3), which had read as follows: "(3) An employee who is discharged after the completion of a 90-day probationary period and is rehired within 12 months may access paid leave immediately."

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 32-101.

§ 32-131.03. Notification.

Paid leave shall be provided upon the written request of an employee upon notice as provided in this section. The request shall include a reason for the absence involved and the expected duration of the paid leave. If the paid leave is foreseeable, the request shall be provided at least 10 days, or as early as possible, in advance of the paid leave. If the paid leave is unforeseeable, an oral request for paid leave shall be provided prior to the start of the work shift for which the paid leave is requested. In the case of an emergency, the employer shall be notified prior to the start of the next work shift or within 24 hours of the onset of the emergency, whichever occurs sooner.

(May 13, 2008, D.C. Law 17-152, § 4, 55 DCR 3452.)

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

§ 32-131.04. Certification.

(a)(1) An employer may require that paid leave under § 32-131.02(b) for 3 or more consecutive days be supported by reasonable certification.

(2) Reasonable certification may include:

(A) A signed document from a health care provider, as defined in § 32-501(5), affirming the illness of the employee;

(B) A police report indicating that the employee was a victim of stalking, domestic violence, or sexual abuse;

(C) A court order; or

(D) A signed statement from a victim and witness advocate, or domestic violence counselor, as defined in § 14-310(a)(2), affirming that the employee is involved in legal action related to stalking, domestic violence, or sexual abuse.

(3) If certification is required by an employer, the employee shall provide a copy of the certification to the employer upon the employee's return to work.

(b)(1) This chapter shall not require a health care professional to disclose

information in violation of section 1177 of the Social Security Act, approved August 21, 1996 (110 Stat. 2029; 42 U.S.C. § 1320d-6), or the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (110 Stat. 2033; 42 U.S.C. § 1320d-2, note).

(2) All information provided to the employer under § 32-131.02 shall not be disclosed by the employer, except to the extent that the disclosure is:

(A) Requested or consented to by the employee;

(B) Ordered by a court or administrative agency; or

(C) Otherwise required by applicable federal or local law.

(May 13, 2008, D.C. Law 17-152, § 5, 55 DCR 3452.)

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

§ 32-131.05. Current paid leave policies.

(a) An employer with a paid leave policy providing paid leave options, such as a paid time-off program or universal leave policy, shall not be required to modify such policy if the policy offers an employee the option, at the employee's discretion, to accrue and use leave under terms and conditions that are at least equivalent to the paid leave prescribed in this chapter.

(b) The terms and conditions of an employer's policy shall be presumed equivalent if they allow an employee to:

(1) Access and accrue paid leave at least at the same rate as or greater than the hours of paid leave provided in § 32-131.02(a)(1), (2), and (3); or

(2) Use the paid leave for the same purposes as those set forth in § 32-131.02(b), including unscheduled leave.

(May 13, 2008, D.C. Law 17-152, § 6, 55 DCR 3452.)

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

§ 32-131.06. Effect on existing employment benefits.

(a) This chapter shall not diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that provides greater paid leave rights to employees than the rights established under this chapter.

(b) The paid leave requirements under this chapter shall not be waived for less than 3 paid leave days by the written terms of a bona fide collective bargaining agreement.

(May 13, 2008, D.C. Law 17-152, § 7, 55 DCR 3452.)

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

§ 32-131.07. Encouragement of more generous paid leave policies.

This chapter shall not prevent an employer from the adoption or retention of a paid leave policy more generous than the one required by this chapter.

(May 13, 2008, D.C. Law 17-152, § 8, 55 DCR 3452.)

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

§ 32-131.08. Prohibited acts.

(a) A person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided by this chapter.

(b) An employer shall not discharge or discriminate in any manner against an employee because the employee:

(1) Opposes any practice by an employer made unlawful by this chapter;

(2) Pursuant or related to this chapter:

(A) Files or attempts to file a charge;

(B) Institutes or attempts to institute a proceeding; or

(C) Facilitates the institution of a proceeding;

(3) Gives any information or testimony in connection with an inquiry or proceeding related to this chapter; or

(4) Uses paid leave provided under this chapter.

(c) Nothing in this chapter shall prohibit an employer from establishing and enforcing a lawful policy relating to improper use of paid leave or from seeking more frequent certifications from an employee if there is evidence of a pattern of abuse of paid leave.

(May 13, 2008, D.C. Law 17-152, § 9, 55 DCR 3452.)

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

§ 32-131.09. Posting requirement.

(a) The Mayor shall prescribe, and the Mayor shall provide to employers, and an employer shall post and maintain in a conspicuous place, a notice that sets forth excerpts from or summaries of the pertinent provisions of this chapter and information that pertains to the filing of a complaint under this chapter. The notice shall be published in all languages spoken by 3% of or 500 individuals in the District of Columbia population, whichever is less.

(b)(1) An employer who willfully violates this section shall be assessed a civil penalty not to exceed $100 for each day that the employer fails to post the notice; provided, that the total penalty shall not exceed $500.

(2) No liability for failure to post notice will arise under this section if the Mayor has failed to provide to the business the notice required by this section.

(c) An employer shall post the notice in English and all languages spoken by employees with Limited or no-English Proficiency, as defined in § 2-1931(5).

(d) Employers shall be furnished copies or summaries of this chapter prepared by the Mayor on request.

(May 13, 2008, D.C. Law 17-152, § 10, 55 DCR 3452; Mar. 25, 2009, D.C. Law 17-353, § 311(b), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353, in subsec. (a), deleted "in languages in accordance with subchapter II of Chapter 19 of Title 2," following "provide to employers,".

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 32-101.

§ 32-131.10. Administration.

This chapter shall be administered by the Department of Employment Services.

(May 13, 2008, D.C. Law 17-152, § 11, 55 DCR 3452.)

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

§ 32-131.11. Effect on other laws.

This chapter shall not:

(1) Supersede any provision of law or contract that provides greater employee paid leave rights than the rights established under this chapter; or

(2) Modify or affect any federal or District law prohibiting discrimination on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation.

(May 13, 2008, D.C. Law 17-152, § 12, 55 DCR 3452.)

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

§ 32-131.12. Penalties.

Except as provided in § 32-131.09(b), an employer who willfully violates the requirements of this chapter shall be subject to a civil penalty of $500 for the 1st offense, $750 for the 2nd offense, and $1000 for the 3rd and each subsequent offense.

(May 13, 2008, D.C. Law 17-152, § 13, 55 DCR 3452.)

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

§ 32-131.13. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this chapter within 60 days after May 13, 2008. If rules are promulgated, the Mayor shall submit the proposed rules to the

Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within this 30-day review period, the proposed rules shall be deemed approved.

(May 13, 2008, D.C. Law 17-152, § 14, 55 DCR 3452.)

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

Delegation of Authority. — Delegation of Rule Making Authority to the Director of the Department of Employment Services pursuant to D.C. Law 17-152, the Accrued Sick Leave and Safe Leave Act of 2008, see Mayor's Order 2008-153, November 6, 2008 (55 DCR 12534).

§ 32-131.14. Hardship exemption.

The Mayor shall exempt, by rule, businesses that can prove hardship as a result of this chapter. The Mayor shall submit the proposed hardship exemption rules to the Council for a 45-day period of review, excluding Saturdays, Sunday, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within the 45-day review period, the proposed rules shall be deemed disapproved.

(May 13, 2008, D.C. Law 17-152, § 15, 55 DCR 3452.)

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

§ 32-131.15. Report by the District of Columbia Auditor.

The District of Columbia Auditor shall prepare and submit to the Mayor and Council, annually, a report of this chapter's economic impact on the private sector. Among other things, the District of Columbia Auditor shall audit a sample of District businesses to determine:

(1) The compliance level of businesses with the posting requirements; and

(2) Whether companies are utilizing staffing patterns to circumvent the intention of this chapter.

(May 13, 2008, D.C. Law 17-152, § 16, 55 DCR 3452.)

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

§ 32-131.16. Applicability.

(a) This chapter shall apply 6 months after May 13, 2008.

(b) In the case of a collective bargaining agreement in effect on the effective date set forth in subsection (a) of this section, this chapter shall apply on the earlier of the date of the termination of the agreement or the date that occurs 18 months after the effective date set forth in subsection (a) of this section.

(May 13, 2008, D.C. Law 17-152, § 17, 55 DCR 3452.)

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

§ 32-131.17. Appropriations contingency.

This chapter shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

(May 13, 2008, D.C. Law 17-152, § 18, 55 DCR 3452.)

Legislative history of Law 17-152. — For Law 17-152, see notes following § 32-131.01.

CHAPTER 2. EMPLOYMENT OF MINORS.

Subchapter I. General

Sec.
32-201. Employment of minors under 14 years of age; distribution of newspapers permitted.
32-202. Employment of minors under 18 years of age; hours of employment; notice to be posted in place of employment; list of minors employed.
32-203. Employment dangerous or prejudicial to life prohibited; Board of Education to prohibit such employment by general or special order.
32-204. Employment of minors under 16 years of age in certain occupations prohibited; exception.
32-205. Employment of minors under 18 years of age in certain occupations prohibited.
32-206. Theatrical permits for minors under 18 years of age for performances and professional sports activities.
32-207. Work or vacation permit — Procurement by employer.
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32-219. Violation of §§ 32-215 to 32-221; revocation of badge or work permit.
32-220. Persons selling merchandise to minor for resale or distribution to ascertain that minor wears badge; penalties; exception.
32-221. Loitering around business establishments prohibited during school hours; penalty.
32-222. Prosecutions.
32-223. Severability.
32-224. Board of Education authorized to enforce subchapter, make regulations, delegate functions, and appoint inspectors.

Subchapter II. Programs for Youth Employment

32-241. Programs for employment and training of young District domiciliaries.
32-242. Training and work experience in persistent problem areas of the District.
32-243. Development of plans for the delivery of workforce development services.
32-244. Evaluation of the summer youth employment program.

Subchapter I. General.

§ 32-201. Employment of minors under 14 years of age; distribution of newspapers permitted.

Except as provided in §§ 32-206 and 32-207, no minor under 14 years of age shall be employed, permitted, or suffered to work in the District of Columbia, in, about, or in connection with any gainful occupation, with the exemption of housework performed outside of school hours in the home of the minor's parent or legal guardian or agricultural work performed outside of school hours in connection with the minor's own home and directly for the minor's parent or legal guardian; provided, that minors 10 years of age and over may be employed outside of school hours in the distribution or sale of newspapers, subject to the provisions of §§ 32-215 to 32-221.

(May 29, 1928, 45 Stat. 998, ch. 908, § 1; June 15, 1976, D.C. Law 1-68, § 2(1), 23 DCR 512.)

Cross references. — Devices and safeguards, reports, records, see § 32-808.

Section references. — This section is referred to in §§ 16-801, 32-202, and 32-207.

Prior Codifications. — 1981 Ed., § 36-501. 1973 Ed., § 36-201.

Legislative history of Law 1-68. — Law 1-68, the "Child Labor Amendments Act of 1976," was introduced in Council and assigned Bill No. 1-48, which was referred to the Committee on Education, Recreation and Youth Affairs. The Bill was adopted on first and second readings on February 24, 1976, and March 9, 1976, respectively. Signed by the Mayor on April 5, 1976, it was assigned Act No. 1-105 and transmitted to both Houses of Congress for its review.

CASE NOTES

In general.

Employer is strictly liable for violation of child labor laws. D.C. Code 1981, § 36-201 et seq. Club 99 v. District of Columbia Alcoholic Beverage Control Bd., 457 A.2d 773, 1982 D.C. App. LEXIS 521 (1982).

Employer's good faith is no defense to violation of child labor laws. D.C. Code 1981, § 36-201 et seq. Club 99 v. District of Columbia Alcoholic Beverage Control Bd., 457 A.2d 773, 1982 D.C. App. LEXIS 521 (1982).

§ 32-202. Employment of minors under 18 years of age; hours of employment; notice to be posted in place of employment; list of minors employed.

Except as provided in § 32-206, no minor under 18 years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except in agricultural work, or housework, or in the distribution or sale of newspapers, as prescribed in § 32-201, and except in newspaper stuffing, subject to the provisions of § 32-215, more than 6 consecutive days in any 1 week, or more than 48 hours in any 1 week, or more than 8 hours in any 1 day, nor shall any minor 16 or 17 years of age be employed, permitted, or suffered to work before 6:00 a.m. or after 10:00 p.m. of any day; nor shall any minor under 16 years of age be employed, permitted, or suffered to work before 7:00 a.m. or after 7:00 p.m. of any day, except during the summer (June 1 through Labor Day) when the evening hour shall be 9:00. Every employer shall post and keep conspicuously posted in the establishment, in or about which any minor is employed, permitted, or suffered to work, a printed notice, furnished by the official authorized to enforce this subchapter, setting forth the legal regulations governing the employment and hours of work of minors and occupations prohibited to minors in such establishments, and, in addition, shall keep accessible in the place of employment a list of minors under 18 employed, permitted, or suffered to work, and an accurate time record showing the hours of beginning and ending work each day. The presence of any such minor in the place of work for a longer time in the day or week than stated in the printed regulation hours shall be prima facie evidence of a violation of the provisions of this section.

(May 29, 1928, 45 Stat. 999, ch. 908, § 2; June 15, 1976, D.C. Law 1-68, § 2(2), 23 DCR 512.)

Prior Codifications. — 1981 Ed., § 36-502. 1973 Ed., § 36-202.
Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-203. Employment dangerous or prejudicial to life prohibited; Board of Education to prohibit such employment by general or special order.

No minor shall be employed, permitted, or suffered to work in any place of employment, or at any employment, dangerous or prejudicial to the life, health, safety, or welfare of such minor. It shall be the duty of the Board of Education of the District of Columbia and the said board shall have the power, jurisdiction and authority, after hearing duly held, to issue general or special orders prohibiting the employment of such minors in any employment or at any place of employment dangerous or prejudicial to the life, health, safety, or welfare of such minors; provided, that no such order shall permit the employment of any minor at any employment specified in §§ 32-204 through 32-206 at a lower age than the age therein specified; provided further, that no hearing shall be necessary for the issuance of an order prohibiting employment in any occupation found by the Secretary of Labor under the authority of the Fair Labor Standards Act to be particularly hazardous for minors under 18 years of age or detrimental to their health and well-being.

(May 29, 1928, 45 Stat. 999, ch. 908, § 3; June 15, 1976, D.C. Law 1-68, § 2(3), 23 DCR 514.)

Section references. — This section is referred to in §§ 16-801, 32-207, and 32-213.
Prior Codifications. — 1981 Ed., § 36-503. 1973 Ed., § 36-203.
Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

References in text. — The Fair Labor Standards Act, referred to near the end of this section, is the Act of June 25, 1938, 52 Stat. 1060, ch. 676, which is codified in 29 U.S.C. §§ 201 to 219.

§ 32-204. Employment of minors under 16 years of age in certain occupations prohibited; exception.

(a) No minor under 16 years of age shall be employed, permitted, or suffered to work at any of the following occupations:

(1) In the operation of any machinery operated by power other than hand or foot power; or

(2) In oiling, wiping, or cleaning machinery or assisting therein.

(b) This section does not apply to any duly approved vocational education program or training under the auspices of the Board of Education or the Trustees of the University.

(May 29, 1928, 45 Stat. 999, ch. 908, § 4; June 15, 1976, D.C. Law 1-68, § 2(4), 23 DCR 514.)

Section references. — This section is referred to in §§ 16-801 and 32-203.

Prior Codifications. — 1981 Ed., § 36-504. 1973 Ed., § 36-204.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-205. Employment of minors under 18 years of age in certain occupations prohibited.

No minor under 18 years of age shall be employed, permitted, or suffered to work at operating any freight or nonautomatic elevator, or in any quarry, tunnel, or excavation.

(May 29, 1928, 45 Stat. 999, ch. 908, § 5; June 15, 1976, D.C. Law 1-68, § 2(5), 23 DCR 514.)

Section references. — This section is referred to in §§ 16-801 and 32-203.

Prior Codifications. — 1981 Ed., § 36-505. 1973 Ed., § 36-205.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-206. Theatrical permits for minors under 18 years of age for performances and professional sports activities.

(a) The Board of Education may issue a theatrical employment permit to a minor under 18 years of age permitting the minor to:

(1) Perform on the stage of a licensed theatre within the District of Columbia in a professional theatrical production;

(2) Perform in a musical or dance recital or concert;

(3) Participate in a radio or television program;

(4) Participate in a motion picture;

(5) Appear as a fashion model; or

(6) Participate in a professional sports activity or circus.

(b) An application for a theatrical permit shall be made by the parent or guardian, and by the agent if applicable, of the minor to the Board of Education. The Board of Education may issue a theatrical employment permit if the Board is satisfied that adequate provisions have been made for the educational instruction of the minor, for safeguarding the minor's health, and for the proper supervision of the minor. The Board of Education may require the employer to provide the necessary resources to satisfy the requirements of this subsection.

(c) A minor shall not appear in more than 2 live performances in 1 day or more than 8 live performances in 1 week. A minor shall not appear in a live performance, or otherwise be required to work, before 7:00 a.m. or after 11:30 p.m. A licensed practical nurse with substantial pediatric experience, or a registered nurse who is a pediatric nurse practitioner, shall be provided for each 3 or fewer infants under the age of 30 months.

(d) A theatrical employment permit shall limit the time during which a minor 7 years of age or younger is permitted at the place of employment within a 24-hour period according to age as follows:

(1) An infant under the age of 6 months may be permitted to remain at the

place of employment for a maximum of 2 hours, which shall consist of not more than 20 minutes of work.

(2) A minor between the ages of 6 months and 30 months may be permitted at the place of employment for a maximum of 4 hours, which shall consist of not more than 2 hours of work, with the balance of the 4-hour period being rest or recreation.

(3) A minor between the ages of 30 months and 7 years may be permitted at the place of employment for a maximum of 6 hours, which shall consist of not more than 3 hours of work, with the balance of the 6-hour period being rest, recreation, or education.

(e) For the purposes of this section, the term "theatrical employment permit" means an authorization to perform or appear in any of the activities listed in subsection (a) of this section for monetary remuneration, a gift, or other form of valuable consideration.

(May 29, 1928, ch. 908, § 7a; Dec. 26, 1941, 55 Stat. 863, ch. 632, § 2; July 3, 1952, 66 Stat. 329, ch. 569, § 1; renumbered as § 6 and amended June 15, 1976, D.C. Law 1-68, § 2(8), 23 DCR 515; July 12, 1988, D.C. Law 7-135, § 2(a), 35 DCR 4144.)

Section references. — This section is referred to in §§ 16-801, 32-201, 32-202, and 32-203.

Prior Codifications. — 1981 Ed., § 36-506. 1973 Ed., § 36-207a.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

Legislative history of Law 7-135. — Law 7-135, the "District of Columbia Minor Theatrical Employment Permit Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-397, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on April 19, 1988, and May 3, 1988, respectively. Signed by the Mayor on May 19, 1988, it was assigned Act No. 7-185 and transmitted to both Houses of Congress for its review.

§ 32-207. Work or vacation permit — Procurement by employer.

No minor under 18 years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except in agricultural work or housework as specified in § 32-201, unless the employer procures and keeps on file and accessible to any attendance officer, inspector or other person authorized to enforce this subchapter a work or vacation permit issued as hereinafter prescribed, except that minors under 18 years of age may be employed without a permit outside of school hours in irregular or casual work usual to the home of the employer; provided, that such employment shall not be in connection with nor form a part of the business, trade, profession, or occupation of the employer; and provided further, that such employment shall not be specifically prohibited by any provision of this subchapter or by any order issued under the authority of § 32-203.

(May 29, 1928, 45 Stat. 1000, ch. 908, § 8; renumbered as § 7 and amended June 15, 1976, D.C. Law 1-68, § 2(9), 23 DCR 516.)

Section references. — This section is referred to in §§ 16-801 and 32-201.

Prior Codifications. — 1981 Ed., § 36-507. 1973 Ed., § 36-208.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-208. Work or vacation permit — Issue by Board of Education; contents; records of applicants.

The work or vacation permit required by this subchapter shall be issued by the Board of Education and shall state the name, sex, date, and place of birth, and place of residence of the minor, the grade last completed by said minor, and the kind of evidence of age accepted, and such other details as may be necessary for the identification of the minor. It shall certify that all the requirements for issuing a work or vacation permit under the provisions of this subchapter have been fulfilled and shall be signed by the person issuing it. It shall state the name and address of the employer for whom and the nature of the specific occupation in which the work permit authorizes the minor to be employed, and no permit shall be valid except for the employer so named and for the occupation so designated. It shall bear a number, shall show the date of its issue, and shall be signed by the minor for whom it is issued in the presence of the person issuing it, and shall be mailed or delivered to the employer. The Board shall maintain an office record for each applicant containing the minor's name, sex, date and place of birth; evidence of age, residence, name and address of the employer; and nature of the specific occupation in which the minor is employed; the grade and school last attended by the minor; the employer's statement of intention to employ; and the parent's, guardian's, or custodian's written consent if such written consent is required.

(May 29, 1928, 45 Stat. 1000, ch. 908, § 9; renumbered as § 8 and amended June 15, 1976, D.C. Law 1-68, § 2(10), 23 DCR 516.)

Prior Codifications. — 1981 Ed., § 36-508. 1973 Ed., § 36-209.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-209. Work or vacation permit — Application requirements.

The Board of Education shall issue a work or vacation permit only upon application in person of the minor desiring employment, and upon submission to and approval by the Board of the following:

(1) A statement signed by the prospective employer or the employer's authorized agent, stating that the employer expects to give such minor present employment, setting forth the specific nature of the occupation in which such minor will be employed, and the number of hours per day and of days per week which said minor will be employed;

(2) Evidence of age as provided in § 32-210;

(3) Written consent of the parent, guardian, or custodian, if the minor is under 16 years of age, specifying permission for employment of such minor; provided, that if such minor is withdrawing from school for purposes of

employment, the parent, guardian or custodian must appear in person before the issuing officer and sign the consent form;

(4) A school record, if the minor is under 16 years of age and is withdrawing from school for purposes of employment, signed by the principal of the public, private or parochial school last attended by the minor, or by a person duly authorized by said principal. The school record shall certify that the minor has completed the 8th grade or the equivalent thereof in a public school, or has regularly received, in a private or parochial school, instruction deemed equivalent by the Board of Education to that prescribed for the completion of the 8th grade in the public school of the District of Columbia. The school record shall contain also the full name, date of birth, grade last completed, and residence of the minor as shown on the records of the school; and

(5) A certificate, if the person is less than 16 years of age, of physical fitness for the employment specified in the statement submitted in accordance with paragraph (1) of this section. Such certificate shall be signed by a licensed physician.

(May 29, 1928, 45 Stat. 1001, ch. 908, § 10; renumbered as § 9 and amended June 15, 1976, D.C. Law 1-68, § 2(11), 23 DCR 517.)

Prior Codifications. — 1981 Ed., § 36-509. 1973 Ed., § 36-210.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-210. Evidence of age.

The evidence of age required by this subchapter shall consist of 1 of the following proofs of age, which shall be required in the order herein designated:

(1) A birth certificate or attested transcript issued by a registrar of vital statistics or other officer charged with the duty of recording births;

(2) A record of age as given in the records of the school first attended by the minor, if obtainable, or in the earliest available school census;

(3) A baptismal record or duly certified transcript thereof showing the date of birth and place of baptism of the minor; or

(4) A bona fide contemporary record of the date and place of the minor's birth kept in the Bible in which the records of the births in the family of the minor are preserved, or other documentary evidence satisfactory to the Board of Education, such as a passport showing the age of the minor, a certificate of arrival in the United States issued by the United States immigration officers and showing the age of the minor, or a life insurance policy.

(May 29, 1928, 45 Stat. 1001, ch. 908, § 11; renumbered as § 10 and amended June 15, 1976, D.C. Law 1-68, § 2(12), 23 DCR 519.)

Section references. — This section is referred to in §§ 16-801, 32-209, and 32-211.

Prior Codifications. — 1981 Ed., § 36-510. 1973 Ed., § 36-211.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-211. Vacation permits.

The Board of Education shall have authority to issue a vacation permit to a minor between the age of 14 and 16 years, permitting employment during the regular summer vacation period of the public schools, or during the school term at such time as the public schools are not in session, if the age of such minor has been proved according to § 32-210, and such minor has in all other respects, except as to completion of the 8th grade, fulfilled the requirements for a work permit specified in this subchapter. These permits shall be different in color from the work permit allowing employment while school is in session and shall state the periods during which its use is valid.

(May 29, 1928, 45 Stat. 1002, ch. 908, § 12; renumbered as § 11 and amended June 15, 1976, D.C. Law 1-68, § 2(13), 23 DCR 520.)

Prior Codifications. — 1981 Ed., § 36-511. 1973 Ed., § 36-212.
Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-212. Employer to furnish, on demand, proof of age of employee.

Whenever any person authorized to enforce this subchapter shall have reason to doubt that any minor employed in any occupation for which a permit is required by this subchapter, and for whom a work permit or vacation permit is not on file, has reached the age of 18 years, such person may make demand on such minor's employer that such employer shall either furnish him within 10 days the evidence required for a work permit showing that the minor is in fact 18 years of age, or shall refuse to employ or permit or suffer such minor to work. In case such evidence is not furnished to such person within 10 days after such demand, the employer shall not thereafter continue to employ such minor or permit or suffer such minor to work in such establishment. Proof of the making of such demand and of failure to deliver such proof of age shall be prima facie evidence, in any prosecution brought for violation of this subchapter, that such minor is under 18 years of age and is unlawfully employed.

(May 29, 1928, 45 Stat. 1002, ch. 908, § 14; renumbered as § 12 and amended June 15, 1976, D.C. Law 1-68, § 2(15), 23 DCR 521.)

Prior Codifications. — 1981 Ed., § 36-512. 1973 Ed., § 36-214.
Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

CASE NOTES

In general.

Employer is strictly liable for violation of child labor laws. D.C. Code 1981, § 36-201 et seq. Club 99 v. District of Columbia Alcoholic Beverage Control Bd., 457 A.2d 773, 1982 D.C. App. LEXIS 521 (1982).

Employer's good faith is no defense to violation of child labor laws. D.C. Code 1981, § 36-201 et seq. Club 99 v. District of Columbia Alcoholic Beverage Control Bd., 457 A.2d 773, 1982 D.C. App. LEXIS 521 (1982).

§ 32-213. Penalties.

(a) A person commits an offense under this subchapter if that person:

(1) Employs a minor or permits a minor to work in violation of this subchapter, of any regulation promulgated by the Board of Education pursuant to § 32-224, or of any order issued under the provisions of § 32-203; or

(2) Interferes with the Board of Education, its officers or agents, or any other person authorized by the District to inspect places of employment of minors.

(b) A person convicted of a 1st offense under this section shall be fined not less than $1,000 nor more than $3,000, or imprisoned not less than 10 days nor more than 30 days, or both. A person convicted of a 2nd or subsequent offense under this section shall be fined not less than $3,000 nor more than $5,000, or imprisoned not less than 30 days nor more than 90 days, or both. Each day during which a violation of this subchapter occurs shall constitute a separate offense.

(May 29, 1928, 45 Stat. 1003, ch. 908, § 15; renumbered as § 13 and amended June 15, 1976, D.C. Law 1-68, § 2(16), 23 DCR 521; July 12, 1988, D.C. Law 7-135, § 2(b), 35 DCR 4114.)

Prior Codifications. — 1981 Ed., § 36-513. 1973 Ed., § 36-215.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

Legislative history of Law 7-135. — For legislative history of D.C. Law 7-135, see Historical and Statutory Notes following § 32-206.

§ 32-214. Board of Education to enforce law; inspection of places in which minors are employed.

It shall be the duty of the Board of Education to cause all the provisions of this subchapter to be enforced, to make complaints against persons violating its provisions, and to prosecute violations of the same. The Board of Education, its inspectors, and agents are empowered and instructed to visit and inspect at any time, and as often as shall be necessary in order effectively to enforce the provisions of this subchapter, all places where minors are employed, and shall have authority to enter any place or establishment covered by the terms of this subchapter, and to have access to work or vacation permits kept on file by the employer and such other records as may aid in the enforcement of this subchapter.

(May 29, 1928, 45 Stat. 1003, ch. 908, § 16; renumbered as § 14 and amended June 15, 1976, D.C. Law 1-68, § 2(17), 23 DCR 521.)

Prior Codifications. — 1981 Ed., § 36-514. 1973 Ed., § 36-216.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-215. Limitations on employment in stuffing, sale and distribution of newspapers; exercise of trades in streets; exception for distribution of political literature.

No minor under 16 years of age shall be employed in the stuffing of newspapers, nor shall the work of any minor 16 or 17 employed stuffing newspapers exceed 40 hours in any 1 week, nor shall such minor be employed on more than 1 night in any week. No minor under 12 years of age shall distribute, sell, expose, or offer for sale any newspapers, magazines, periodicals, or any other articles or merchandise of any description, or distribute handbills or circulars, except political literature as specified below, in any street or public place, or exercise the trade of bootblack or any other trade, in any street or public place; provided, that the provisions of this subchapter shall not apply to minors 10 years of age and over engaged in the distribution of newspapers, magazines, or periodicals on fixed routes; provided further, that no minor under 16 years of age shall be employed or permitted or suffered to work at any of the trades or occupations mentioned in this section, in any street or public place, after 7:00 p.m. or before 6:00 a.m., or, unless holding a work permit issued in accordance with the provisions of this subchapter, during the hours when such minor's school is in session. Nothing in this section shall be construed as prohibiting the distribution or circulation, by a minor, of political literature or petitions, or such other materials, for which the minor receives no pecuniary compensation.

(May 29, 1928, 45 Stat. 1003, ch. 908, § 17; renumbered as § 15 and amended June 15, 1976, D.C. Law 1-68, § 2(18), 23 DCR 522.)

Section references. — This section is referred to in §§ 16-801, 32-201, 32-202, 32-216, 32-217, 32-218, 32-219, and 32-220.

Prior Codifications. — 1981 Ed., § 36-515. 1973 Ed., § 36-217.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-216. Street-trades badges — Required.

No minor under 16 years of age shall work at any time, or be employed or permitted or suffered to work at any time, in any of the trades or occupations mentioned in § 32-215, unless such minor shall have procured and shall wear in plain sight while so working a badge as hereinafter provided, issued by the Board of Education, and unless the minor complies with all the legal requirements concerning school attendance.

(May 29, 1928, 45 Stat. 1004, ch. 908, § 19; renumbered as § 16 and amended June 15, 1976, D.C. Law 1-68, § 2(20), 23 DCR 523.)

Section references. — This section is referred to in §§ 16-801, 32-201, 32-219, and 32-220.

Prior Codifications. — 1981 Ed., § 36-516. 1973 Ed., § 36-219.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-217. Street-trades badges — Application requirements.

The Board of Education shall issue a street-trades badge only upon the application of the minor desiring it, with the written consent of the parent, guardian, or custodian of such minor, and upon proof that the minor is of the age required by § 32-215, which shall consist of the same evidence as is required for a work permit under this subchapter. A work permit issued as required by this subchapter may be accepted in lieu of any other requirements for said badge.

(May 29, 1928, 45 Stat. 1004, ch. 908, § 20; renumbered as § 17 and amended June 15, 1976, D.C. Law 1-68, § 2(21), 23 DCR 524.)

Section references. — This section is referred to in §§ 16-801, 32-201, 32-219, and 32-220.

Prior Codifications. — 1981 Ed., § 36-517. 1973 Ed., § 36-220.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-218. Street-trades badges — Contents; record to be kept; badges not transferable.

Such badge shall bear a number, and every such badge on its reverse side shall be signed in the presence of the officer issuing the same by the minor in whose name it is issued and shall contain the minor's name, address and date of birth and such other information as the officer issuing the same shall deem necessary. A complete record of badges issued and refused, and of the facts relating thereto, including the name and address of the parent, guardian, or custodian, the day, year, and month of birth of the minor, the date of issuance and kind of evidence of age accepted, and school grade and name of school attended, shall be kept by the Board of Education. No minor to whom such badge is issued shall give, lend, sell, or otherwise transfer it to any other person, or be engaged in any of the trades or occupations mentioned in § 32-215 without wearing such badge, and such minor shall exhibit the same upon demand to any police or attendance officer, or to any person charged with the duty of enforcing this subchapter.

(May 29, 1928, 45 Stat. 1004, ch. 908, § 21; renumbered as § 18 and amended June 15, 1976, D.C. Law 1-68, § 2(22), 23 DCR 524.)

Section references. — This section is referred to in §§ 16-801, 32-201, 32-219, and 32-220.

Prior Codifications. — 1981 Ed., § 36-518. 1973 Ed., § 36-221.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-219. Violation of §§ 32-215 to 32-221; revocation of badge or work permit.

The Board of Education shall order any minor found to be engaged in any of the trades or occupations mentioned in § 32-215, in violation of any of the provisions of §§ 32-215 through 32-221, to cease and desist from engaging in

such trade or occupation, and the parent, guardian, or custodian of such minor shall be notified by the Board of its order. The Board of Education may also revoke the badge or work permit of any minor who violates any provision of this subchapter, or who fails to comply with all legal requirements concerning school attendance for such period as the Board may require. Upon revocation, the Board shall so notify the parent, guardian, or custodian of such minor, and it shall thereupon become the duty of said parent, guardian, or custodian to surrender or require said minor to surrender said badge or work permit to the Board. After notice to the minor and the parent, guardian, or custodian of the revocation of such badge or work permit, said minor shall be deemed to be in the same status as a minor without a badge. The refusal of any such minor to surrender the badge upon such revocation shall be deemed a violation of this subchapter.

(May 29, 1928, 45 Stat. 1004, ch. 908, § 22; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 159(j)(1); renumbered as § 19 and amended June 15, 1976, D.C. Law 1-68, § 2(23), 23 DCR 525.)

Section references. — This section is referred to in sss 16-801, 32-201, and 32-220.

Prior Codifications. — 1981 Ed., § 36-519. 1973 Ed., § 36-222.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-220. Persons selling merchandise to minor for resale or distribution to ascertain that minor wears badge; penalties; exception.

Any person who either personally or as agent of any other person, or of any firm, corporation, or company, furnishes or sells or offers for sale to any minor under 16 any article of any description to be used for the purpose of sale or distribution in any public place shall first ascertain that said minor wears the badge issued by the Board of Education in plain sight as herein provided, and if said minor has no badge, no article shall be furnished or sold to the minor. Any person who fails to comply with the foregoing provision, or who furnishes or sells or offers for sale to any minor any article of any description, with the knowledge that the minor intends to sell or distribute such article in violation of any provision of this subchapter, or after having received written notice from any officer charged with the enforcement of this subchapter that such minor is selling such article in violation of any provision of this subchapter, or any person who procures any minor to violate any provision of this subchapter shall for a 1st offense be punished by a fine of not less than $25 nor more than $100, or by imprisonment for not less than 10 nor more than 30 days, or by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than $50 nor more than $300, or by imprisonment for not less than 30 nor more than 90 days, or by both such fine and imprisonment. Whoever, having under control or custody any minor, permits or consents to the violation by such minor of any of the provisions of §§ 32-215 to 32-220 shall for a 1st offense be punished by a fine of not less than $5 nor more than $100, or by imprisonment of not less than 5 nor more than 30 days,

or by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than $10 nor more than $200, or by imprisonment for not less than 10 nor more than 60 days, or by both such fine and imprisonment. Nothing in this section shall be construed as prohibiting the distribution or circulation, by a minor, of political literature or petitions, or such other materials, for which the minor receives no pecuniary compensation.

(May 29, 1928, 45 Stat. 1005, ch. 908, § 23; renumbered as § 20 and amended June 15, 1976, D.C. Law 1-68, § 2(24), 23 DCR 526.)

Section references. — This section is referred to in §§ 16-801, 32-201, and 32-219.

Prior Codifications. — 1981 Ed., § 36-520. 1973 Ed., § 36-223.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-221. Loitering around business establishments prohibited during school hours; penalty.

No owner or employee of a business establishment shall permit a minor under the age of 16, having reasonable grounds to believe that such minor is a truant or unlawfully absent from school, to loiter on the premises of such business establishment during those hours when school is in session. Any person violating the provisions of this section may be fined not less than $25 nor more than $300, or may be imprisoned for not less than 10 days or longer than 30 days.

(May 29, 1928, 45 Stat. 1006, ch. 908, § 24; renumbered as § 21 and amended June 15, 1976, D.C. Law 1-68, § 2(25), 23 DCR 527.)

Section references. — This section is referred to in §§ 16-801, 32-201, and 32-219.

Prior Codifications. — 1981 Ed., § 36-521. 1973 Ed., § 36-224.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

Delegation of Authority. — Delegation of authority under D.C. Law 5-88: Mayor's Order 85-28, March 11, 1985.

Editor's notes. — Amendment of regulations: Section 2 of D.C. Law 5-88 amended Article 36 of the Police Regulations of the District of Columbia (Commissioner's Order No. 301, 904/1, effective Nov. 1, 1948) which provides for the regulation of video arcades and mechanical amusement machines.

§ 32-222. Prosecutions.

Prosecutions for violations of any of the provisions of this subchapter, or of any regulation made by the Board of Education under authority of this subchapter, shall be on information filed in the Superior Court of the District of Columbia in the name of the District of Columbia by the Corporation Counsel or any assistants.

(May 29, 1928, 45 Stat. 1006, ch. 908, § 26; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 159(j)(2); renumbered as § 22 and amended June 15, 1976, D.C. Law 1-68, § 2(27), 23 DCR 527.)

Prior Codifications. — 1981 Ed., § 36-524. 1973 Ed., § 36-228.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

CASE NOTES

In general.

Alcoholic Beverage Control Board had authority to discipline licensee for violating statutes and regulations governing employment of minors. D.C. Code 1981, § 25-118. Club 99 v. District of Columbia Alcoholic Beverage Control Bd., 457 A.2d 773, 1982 D.C. App. LEXIS 521 (1982).

§ 32-223. Severability.

If any provision of this subchapter or the application of such provision to certain circumstances be held invalid, the remainder of this subchapter and the application of such provision to circumstances other than those as to which it is held invalid shall not be affected thereby.

(May 29, 1928, 45 Stat. 1006, ch. 908, § 28; renumbered as § 24 June 15, 1976, D.C. Law 1-68, § 2(28), 23 DCR 528.)

Prior Codifications. — 1981 Ed., § 36-522. 1973 Ed., § 36-226.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

§ 32-224. Board of Education authorized to enforce subchapter, make regulations, delegate functions, and appoint inspectors.

The Board of Education of the District of Columbia is hereby empowered to carry out and enforce the provisions of this subchapter, and is authorized to promulgate such regulations as may be necessary to effectuate the purposes of this subchapter. The Board of Education is further authorized to delegate the performance of any of its functions and duties under this subchapter to any officer, agent, or department of the Board, and to appoint such number of child labor inspectors or other employees as may be necessary to carry out the provisions of this subchapter.

(May 29, 1928, 45 Stat. 1006, ch. 908, § 29; renumbered as § 25 and amended June 15, 1976, D.C. Law 1-68, § 2(29), 23 DCR 528.)

Section references. — This section is referred to in §§ 16-801 and 32-213.

Prior Codifications. — 1981 Ed., § 36-523. 1973 Ed., § 36-227.

Legislative history of Law 1-68. — For legislative history of D.C. Law 1-68, see Historical and Statutory Notes following § 32-201.

Subchapter II. Programs for Youth Employment.

§ 32-241. Programs for employment and training of young District domiciliaries.

(a) The Mayor shall establish and implement programs, subject to the

annual appropriation of funds, for the employment and training of young persons who are domiciliaries of the District of Columbia, as follows:

(1) *Summer youth jobs.* —

(A)(i) A summer youth jobs program to provide for the employment each summer of no less than 10,000 and no more than 21,000 youth between 14 and 21 years of age on the date of enrollment in the program.

(ii) Youth between the ages of 14 and 15 years at the date of enrollment shall be compensated at the rate of $5.25 per hour.

(iii) Youth between the ages of 16 and 21 years at the date of enrollment shall be compensated at a rate equal to the federal minimum wage rate established by section 6 of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1062; 29 U.S.C. § 206).

(A-i) Registration for the summer youth jobs program shall occur between the second day of January and the first day of April of each year.

(B) The weekly number of hours of employment under the summer youth jobs program shall be established according to the age of the youth to be employed and the nature and requirements of the job, but shall not be less than 20 nor more than 25 hours per week. Participants in this program shall be employed for a period of no more than 6 weeks.

(C) Employment may include an appropriate number of supervisory positions at a wage not to exceed the federal minimum wage by more than 12%; provided, that these positions shall not be subject to the requirements under this paragraph regarding the number of hours and weeks of employment.

(D) The Department of Employment Services shall implement the summer youth jobs program subject to the appropriation of funds or availability of funds through public-private partnerships between the District government and a District business that has the ability to employ youth under this program; provided, that these partnerships shall be subject to all federal and District laws, rules, and regulations relating to the procurement and award of contracts, grants, or other government assistance. For purposes of this paragraph, the term "District Business" means a corporation or any entity carrying on any trade or business in the District of Columbia that is subject to taxation under § 47-1807.02 or § 47-1808.03.

(E) The Mayor shall issue rules to implement this paragraph. The proposed rules shall be submitted by the Mayor to the Council for review and approval.

(2) *In school jobs.* — An in school jobs program to provide for the employment throughout the school year of students aged 14 through 21 years on a part-time basis, with the minimum of 10 hours per week, at the federal minimum wage. Priority shall be given to students who may drop out of school to seek work because they are economically disadvantaged; provided, that students who do not qualify for prioritization shall be eligible for the program.

(3) *Out of school year-round employment.* — An out of school year-round employment program to provide for the employment of youth 16 through 24 years of age at the prevailing entry-level wage for the job being performed, not to exceed $3.25 per hour during fiscal years 1979 and 1980, and thereafter not to exceed a wage 12% greater than the federal minimum wage. Priority for

employment under this program shall be given to economically disadvantaged youth with special consideration given to public housing residents; provided, that youth who are not economically disadvantaged or public housing residents shall be eligible for the program. The program shall have special safeguards to assure that the prospect of employment under this section does not induce students to drop out of school.

(4) *On-the-job training program for adults.* — An on-the-job training program for adults at least 18 years of age who are District of Columbia residents and unemployed. Priority for participation in the program shall be given to economically disadvantaged adults with dependents, with special consideration given to public housing residents. The District of Columbia government shall reimburse participating employers ½ of the prevailing wage paid for an occupation, as determined by the Mayor, for a period not to exceed 12 months. The employer shall pay all wages in excess of the allowable reimbursement and all fringe benefits. The Mayor shall require that participating private sector employers agree to hire persons who successfully complete the program. Nothing in this section shall prohibit the participation of the Council of the District of Columbia in the on-the-job training program for adults.

(5) *Training and retraining for employment.* — A program for preemployment training and retraining for persons 16 years of age and above, who are domiciliaries of the District of Columbia. Allowances may be paid to the participants in the program. Priority should be given to persons who are economically disadvantaged. Training programs pursuant to this paragraph may be coupled with those conducted under paragraphs (3) and (4) of this subsection.

(b) Employment under the programs established pursuant to subsection (a) of this section may be provided directly with the government of the District of Columbia or with the private sector on a fully funded, partially or match-funded basis through grants to or by contract with nonprofit or profit-making organizations, associations, institutions or businesses. The Mayor shall not use more than 10% of funds for the programs for administrative and vendor costs.

(c) The programs established pursuant to subsection (a) of this section may include, but shall not be limited to, the following supportive services and activities: Transportation; orientation; counseling and training; supplies and equipment; and program promotion.

(d) For the purposes of this section, the term:

(1) "Economically disadvantaged" means a person who is either:

(A) A member of a family which receives public assistance;

(B) A member of a family whose income during the previous 6 months on an annualized basis was such that:

(i) The family would have qualified for public assistance if it had applied for such assistance;

(ii) It does not exceed the poverty level; or

(iii) It does not exceed 70% of the lower living standard income level;

(C) A foster child on whose behalf state or local government payments are made; or

(D) Where the status presents a significant barrier to employment:

(i) A client of a sheltered workshop;

(ii) An individual with a disability;

(iii) A person residing, or who once resided, in an institution or facility providing 24-hour support, such as a prison, a juvenile detention facility, a hospital, or a community care facility; or

(iv) A regular outpatient of a mental hospital rehabilitation facility or similar institution.

(2) "Priority" means a good faith effort by a program under this subchapter to fill at least 30% of the program's available positions with persons classified as economically disadvantaged.

(e) An employer required by law to pay a minimum wage higher than that specified in this section shall pay such higher wage to persons employed pursuant to this section.

(f) The Mayor of the District of Columbia shall issue regulations to implement this section. The rules and regulations issued by the Mayor for the purpose of implementing the provisions of this section shall be submitted by the Mayor to the Council of the District of Columbia for a 45 calendar-day review period, excluding days of Council recess. No such rules or regulations shall take effect until the end of the 45 calendar-day period beginning on the day such rules or regulations are transmitted by the Mayor to the Chairman of the Council, and then only if during such period the Council does not adopt a resolution disapproving such rules and regulations in whole or in part.

(Jan. 5, 1980, D.C. Law 3-46, § 2, 26 DCR 2310; July 2, 1982, D.C. Law 4-124, § 2, 29 DCR 2091; Mar. 10, 1983, D.C. Law 4-193, § 2, 30 DCR 43; Feb. 28, 1987, D.C. Law 6-211, § 2, 34 DCR 847; May 10, 1989, D.C. Law 7-231, § 45, 36 DCR 492; Oct. 18, 2005, D.C. Law 16-22, § 2, 52 DCR 8076; Apr. 24, 2007, D.C. Law 16-305, § 44, 53 DCR 6198; Sept. 11, 2008, D.C. Law 17-221, § 2, 55 DCR 8293; Sept. 11, 2008, D.C. Law 17-223, § 2, 55 DCR 8297; Mar. 3, 2010, D.C. Law 18-111, § 1071, 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 2232(a), 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 2062, 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 36-702.

Effect of amendments. — D.C. Law 16-22, rewrote subsec. (a)(1) which had read as follows: "(1) Summer youth jobs.—A summer youth jobs program to provide for the employment each summer of youths between the ages of 14 and 21 on the date of enrollment in the program, at a rate equal to the federal minimum wage as established by § 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. § 206). The weekly number of hours of such employment shall be established according to the age of the youth to be employed and the nature and requirements of the job, but shall not be less than 20 nor more than 40 hours per week. Employment under this program may include an appropriate number of supervisory positions at a wage not to exceed the federal minimum wage by more than 12%."

D.C. Law 16-305, in subsec. (d)(4)(B), substituted "An individual with a disability" for "A handicapped individual".

D.C. Law 17-221 rewrote subsec. (d).

D.C. Law 17-223, in subsec. (a)(2), substituted "basis, with the minimum of 10 hours per week," for "basis"; in subsecs. (a)(2), (3), substituted "residents; provided, that youth who are not economically disadvantaged or public housing residents shall be eligible for the program" for "residents"; and, in subsec. (b), added "The Mayor shall not use more than 10% of funds for the programs for administrative and vendor costs."

D.C. Law 18-111, in subsec. (a)(1)(A), substituted "no less than 10,000 and no more than 21,000 youth" for "10,000 youth"; added subsec. (a)(1)(A-i); and, in subsec. (a)(1)(B), substituted

"period of no more than 6 weeks" for "minimum of".

D.C. Law 18-223 added a section heading; and, in subsec. (a)(1)(B), substituted "25 hours" for "40 hours".

D.C. Law 19-21 rewrote subsec. (a)(1)(A), which formerly read:

"(1)(A) Summer youth jobs—A summer youth jobs program to provide for the employment each summer of no less than 10,000 and no more than 21,000 youth between 14 and 21 years of age on the date of enrollment in the program, at a rate at least equal to the federal minimum wage established by section 6 of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1062; 29 U.S.C. § 206)."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Access to Youth Employment Programs Temporary Amendment Act of 2007 (D.C. Law 17-75, January 23, 2008, law notification 55 DCR 1455).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Access to Youth Employment Programs Emergency Amendment Act of 2007 (D.C. Act 17-170, October 26, 2007, 54 DCR 10982).

For temporary (90 day) amendment of section, see § 1071 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 2261 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 1071 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) addition, see § 2261 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 2232(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 3-46. — Law 3-46, the "Youth Employment Act of 1979," was introduced in Council and assigned Bill No. 3-138, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on September 25, 1979, and October 23, 1979, respectively. Signed by the Mayor on November 9, 1979, it was assigned Act No. 3-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-124. — Law 4-124, the "Youth Employment Act of 1979 Amendment Act of 1982," was introduced in Council and assigned Bill No. 4-401, which was referred to the Committee on Housing and Economic Affairs. The Bill was adopted on first and second readings on April 6, 1982, and April 27, 1982, respectively. Signed by the Mayor on May 11, 1982, it was assigned Act No. 4-189 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-193. — Law 4-193, the "Youth Employment Act of 1979 Amendments /Job Skills and Placement Programs for Public Housing Residents Act of 1982," was introduced in Council and assigned Bill No. 4-331, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-277 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-211. — Law 6-211, the "Employment Amendment Act of 1986," was introduced in Council and assigned Bill No. 6-111, which was referred to the Committee on Housing and Economic Development. The bill was adopted on first and second readings on November 25, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-271 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-22. — Law 16-22, the "Summer Youth Employment Act of 2005", was introduced in Council and assigned Bill No. 16-23 which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 7, 2005, and July 6, 2005, respectively. Signed by the Mayor on July 14, 2005, it was assigned Act No. 16-131 and transmitted to both Houses of Congress for its review. D.C. Law 16-22 became effective on October 18, 2005.

Legislative history of Law 16-305. — Law 16-305, the "People First Respectful Language Modernization Act of 2006", was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to

both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

Legislative history of Law 17-221. — Law 17-221, the "Priority Employment for Economically Disadvantaged Youth in the Youth Employment Program Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-481, which was referred to the Committee of Workforce Development and Government Operations. The Bill was adopted on first and second readings on June 3, 2008, and July 1, 2008, respectively. Signed by the Mayor on July 16, 2008, it was assigned Act No. 17-441 and transmitted to both Houses of Congress for its review. D.C. Law 17-221 became effective on September 11, 2008.

Legislative history of Law 17-223. — Law 17-223, the "Access to Youth Employment Programs Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-442, which was referred to the Committee of Workforce Development and Government Operations. The Bill was adopted on first and second readings on June 3, 2008, and July 1, 2008, respectively. Signed by the Mayor on July 16, 2008, it was assigned Act No. 17-443 and transmitted to both Houses of Congress for its review. D.C. Law 17-223 became effective on September 11, 2008.

Legislative history of Law 18-111. — Law 18-111, the "Fiscal Year 2010 Budget Support Act of 2009", was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Legislative history of Law 18-223. — Law 18-223, the "Fiscal Year 2011 Budget Support Act of 2010", was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Legislative history of Law 19-21. — Law 19-21, the "Fiscal Year 2012 Budget Support Act of 2011", was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Short title. — Short title: Section 1070 of D.C. Law 18-111 provided that subtitle H of title I of the act may be cited as the "Summer Youth Employment Amendment Act of 2009".

Short title: Section 2231 of D.C. Law 18-223 provided that subtitle T of title II of the act may be cited as the "Youth Workforce Development Planning and Evaluation Amendment Act of 2010".

Short title: Section 2061 of D.C. Law 19-21 provided that subtitle G of title II of the act may be cited as "Summer Youth Employment Compensation Amendment Act of 2011".

Editor's notes. — Authorization of funds for contract with D.C. Street Academy: Section 3 of D.C. Law 4-124 provided that during the fiscal year ending September 30, 1983, the expenditure of funds is authorized for a direct contract with the D.C. Street Academy, a nonprofit, certified, and accredited secondary school specifically designed and established to serve the target population identified in [§ 36-702(a)(5) § 32-241, 2001 Ed.].

§ 32-242. Training and work experience in persistent problem areas of the District.

(a) Commencing 30 days after October 20, 2005, and subject to the annual appropriation of funds, the Mayor shall establish and operate a year round program to provide domiciliaries of the District of Columbia between the ages of 14 and 24 years with training and work experience in both the public and private sectors of the economy. The Mayor shall target the services of this program to those youth residing in persistent problem areas of the District where such factors as crime, lack of economic development, and high unemployment create a particular need for the services of this program.

(b) Youth participants shall be certified by the Department of Employment Services as to residence and income. Priority in the selection of participants

shall be given to hard-to-serve youth residing in persistent problem areas of the District that the Mayor may further identify by executive order.

(c) Youth participants shall be assessed for work experience placement suitability at the time of entry into the program and shall receive case management services during their period of participation in the program.

(d) Based upon the initial assessment, youth participants may be referred to and shall successfully complete employment counseling, leadership and life skills training, pre-employment training, or occupational skills training in demand occupations prior to placement in paid work.

(e) After participants have been assessed and determined to be ready for placement in work experience, they shall be placed in available work positions that pay stipends, training wages or wages in such amounts as the Mayor may determine to be appropriate for the work position and participant.

(f) The Mayor shall also provide participants with job development services, job retention counseling, and unsubsidized job placement assistance.

(Jan. 5, 1980, D.C. Law 3-46, § 2a, formerly § 3, as added Oct. 20, 2005, D.C. Law 16-33, § 2052, 52 DCR 7503; renumbered Mar. 2, 2007, D.C. Law 16-191, § 5(k), 53 DCR 6794; Sept. 18, 2007, D.C. Law 17-20, § 2032, 54 DCR 7052.)

Effect of amendments. — D.C. Law 16-191 validated previously made technical corrections in subsec. (a) and (b).

D.C. Law 17-20, in subsec. (a), substituted "ages of 14" for "ages of 16".

Emergency legislation. — For temporary (90 day) addition, see § 2052 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 3(d) of Finance and Revenue Technical Amendments Second Emergency Amendment Act of 2006 (D.C. Act 16-585, December 28, 2006, 54 DCR 340).

For temporary (90 day) amendment of section, see § 2032 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 16-33. — Law 16-33, the "Fiscal Year 2006 Budget Support Act of 2005", was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Legislative history of Law 16-191. — Law 16-191, the "Technical Amendments Act of 2006", was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

Legislative history of Law 17-20. — Law 17-20, the "Fiscal Year 2008 Budget Support Act of 2007", was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Short title. — Short title: Section 2031 of D.C. Law 17-20 provided that subtitle D of title II of the act may be cited as the "Youth Employment Amendment Act of 2007".

§ 32-243. Development of plans for the delivery of workforce development services.

(a) The Mayor shall develop a plan for the delivery of workforce development services for the summer youth jobs program required by § 32-241(a)(1).

(b) The Mayor shall develop a plan for the delivery of workforce develop-

ment services for the out-of-school year-round employment program required by § 32-241(a)(3).

(c) The plans required by this section shall include the following components:

(1) Stated objectives of the program;

(2) Quantitative and qualitative output and outcome measurements and the proposed evaluation mechanisms;

(3) A review of the previous year's programmatic implementation and an analysis of what strategies have worked and what strategies have not worked with regards to achieving the programmatic goals;

(4) A full budget narrative, including a delineation of funding for youth connected to traditional academic institutions and youth who are disconnected from any academic institution;

(5) A delineation of the specific roles that the nonprofit sectors and government sectors play as they relate to policies, procedures, and specific services to be offered to youth requesting workforce development services;

(6) A strategy to link workforce development programming with academic objectives;

(7) A strategy to link youth workforce development programming with local employers' current and projected workforce needs; and

(8) A strategy to identify all potential obstacles to employment success for participating youth and connect the youth to additional support services as needed.

(d) In the development of the plans required by this section, the Mayor shall consult with youth workforce development stakeholders, experts, and providers.

(e) Within 120 days of September 24, 2010, the Mayor shall submit the plans required by this section to the Council for its approval. Upon approval by the Council, the Mayor shall implement the plans.

(Jan. 5, 1980, D.C. Law 3-46, § 2b, as added Sept. 24, 2010, D.C. Law 18-223, § 2232(b), 57 DCR 6242.)

Emergency legislation. — For temporary (90 day) addition, see § 2232(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 32-241.

§ 32-244. Evaluation of the summer youth employment program.

(a) By June 1, 2011, and every year thereafter, the Mayor shall hire an independent contractor to evaluate the summer youth employment program. The contractor shall conduct the evaluation according to nationally accepted standards. The evaluation criteria shall include a pre-program and post-program survey of participating youth and employers. The contractor shall interview local youth workforce development stakeholders, experts, and providers when preparing the evaluation.

(b) The evaluation shall include an assessment of the following:

(1) Client satisfaction from participating youth and employers;

(2) Job responsibilities of participating youth;

(3) Support mechanisms for participating youth and employers;

(4) Sense of progress as it relates to job readiness and specific work skills gained for participating youth;

(5) An estimation of the percentage of youth participating in each of the various types of activities provided through the summer youth employment program (for example, work experience, academic, and youth enrichment); and

(6) An assessment of the steps taken to address shortcomings identified in previous program evaluations and an analysis of the effectiveness of these corrective measures.

(c) By December 30, 2011, and every year thereafter, the contractor shall present the results of the evaluation to the Council and the Department of Employment Services. The department shall place the evaluation on its website.

(Jan. 5, 1980, D.C. Law 3-46, § 2c, as added Sept. 24, 2010, D.C. Law 18-223, § 2232(b), 57 DCR 6242.)

Cross references. — Procurement, policy, effect upon Mayor's powers pursuant to this chapter, see § 2-302.01.

Emergency legislation. — For temporary (90 day) addition, see § 2232(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 32-241.

CHAPTER 3. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH DISABILITIES.

Subchapter I. Employment Opportunities

Sec.
32-301. Purpose.
32-302. Definitions.
32-303. Committee for Purchase of Products and Services of the Blind and Other Individuals with Severe Disabilities — Established.
32-304. Committee for Purchase of Products and Services of the Blind and Other Individuals with Severe Disabilities — Duties.
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Subchapter II. Rehabilitation Services Program

32-331. Establishment of the Rehabilitation Services Program.
32-331.01. Grant and contract authority.
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Subchapter I. Employment Opportunities.

§ 32-301. Purpose.

(a) The purpose of this chapter is to further the policy of the District of Columbia to encourage and assist blind individuals and individuals with other severe disabilities to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for products and services for blind individuals and individuals with other severe disabilities thereby enhancing their dignity and capacity for self-support.

(b) Further, it is the purpose of this chapter to create employment opportunities for blind individuals and individuals with other severe disabilities which enhance training, evaluation, adjustment and open market employment for those persons who become sufficiently capable.

(Mar. 3, 1979, D.C. Law 2-128, § 2, 25 DCR 2236; Apr. 24, 2007, D.C. Law 16-305, § 45(a), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 36-601. 1973 Ed., § 36-801.

Effect of amendments. — D.C. Law 16-305 substituted "individuals and individuals with other severe disabilities" for "and other severely handicapped individuals" and "products and services for blind individuals and individuals for with other severe disabilities" for "blind and other severely handicapped products and services".

Legislative history of Law 2-128. — Law 2-128, the "Employment Opportunities Act of 1978," was introduced in Council and assigned Bill No. 2-151, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 11, 1978, and July 25, 1978, respectively. Signed by the Mayor on August 17, 1978, it was assigned Act No. 2-263 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 32-241.

§ 32-302. Definitions.

For the purposes of this chapter:

(1) The term "blind" refers to an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit

to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

(2) The term "direct labor" includes all work required for preparation, processing and packing but not supervision, administration, inspection and shipping.

(3) The term "qualified nonprofit agency for the blind and other individuals with severe disabilities" means an agency:

(A) Organized under the laws of the United States or of the District of Columbia operated in the interest of blind individuals and other individuals with severe disabilities and the net income of which does not ensure, in whole or in part, to the benefit of any shareholder or other individual;

(B) Which complies with any applicable occupational health and safety standard required by the laws of the United States or of the District of Columbia; and

(C) Which in the manufacture of products and in the provision of service (whether or not the products or services are procured under this chapter) during the fiscal year employs blind and other individuals with severe disabilities for not less than 75% of the person-hours of direct labor required for the manufacture or provision of the products or services.

(4) The term "individual with a severe disability" means any person (other than a blind person as heretofore defined) who is so severely incapacitated by any physical or mental disability that he or she cannot engage in normal competitive employment because of such disability.

(Mar. 3, 1979, D.C. Law 2-128, § 3, 25 DCR 2236; Apr. 24, 2007, D.C. Law 16-305, § 45(b), 53 DCR 6198; Mar. 25, 2009, D.C. Law 17-353, § 172(a), 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 36-602. 1973 Ed., § 36-802.

Effect of amendments. — D.C. Law 16-305, in par. (3), substituted "blind and other individuals with severe disabilities" for "blind and other severely handicapped" and "individuals with severe disabilities" for "severely handicapped individuals"; and in par. (4), substituted "individual with a severe disability" for "severely handicapped".

D.C. Law 17-353 validated a previously made technical correction in subsec. (c).

Legislative history of Law 2-128. — For legislative history of D.C. Law 2-128, see Historical and Statutory Notes following § 32-301.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 32-241.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 32-101.

§ 32-303. Committee for Purchase of Products and Services of the Blind and Other Individuals with Severe Disabilities — Established.

(a) There is hereby created a Committee for Purchase of Products and Services of the Blind and Other Individuals with Severe Disabilities (hereinafter referred to as the "Committee") to be appointed by the Mayor of the District of Columbia (hereinafter referred to as the "Mayor"). The Committee shall be composed of 2 private citizens conversant with the problems incident to the employment of the blind and other individuals with severe disabilities, 2 citizens representing individuals who are consumers with severe disabilities

employed in qualified nonprofit agencies for the blind and other individuals with severe disabilities, 2 citizens representing the general public and a representative of each of the following agencies: Directors of the Department of General Services, the Office of Budget and Management Systems and the Department of Human Services. The members of the Committee shall be appointed by the Mayor for a term of 4 years and shall not serve beyond the expiration of their term: Except, that of the 6 private citizen members first appointed, 2 shall be appointed for a term of 2 years, 2 shall be appointed for a term of 3 years, and 2 shall be appointed for a term of 4 years, as designated by the Mayor at the time of appointment. The members of the Committee shall designate 1 of their number to be chairperson.

(b) Any private citizen member, appointed under subsection (a) of this section to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed, shall be appointed only for the remainder of such term.

(c) Members of the Committee shall serve without compensation other than reimbursement for expenses actually incurred in connection with the work of the Committee.

(d) Subject to such rules as may be adopted by the Committee, the Mayor may appoint and fix the pay of any personnel which the Committee determines is necessary to assist it in carrying out its duties and powers under this chapter.

(e) The Committee may secure directly from any agency of the District of Columbia government (hereinafter referred to as "District government") information which the Committee deems necessary to carry out this chapter. Upon request of the chairperson of the Committee, the head of such agency shall furnish such information to the Committee.

(f) The Committee shall, not later than 90 days following the close of each fiscal year, transmit to the Mayor and to the Council of the District of Columbia (hereinafter referred to as the "Council") a report which shall include:

(1) The names of the Committee members serving in the preceding fiscal year;

(2) The dates of Committee meetings in that year;

(3) A description of its activities under this chapter in that year;

(4) A list of contracts awarded under this chapter and the recipients thereof; and

(5) Any recommendations for changes in this chapter which it determines are necessary.

(Mar. 3, 1979, D.C. Law 2-128, § 4, 25 DCR 2236; Apr. 24, 2007, D.C. Law 16-305, § 45(c), 53 DCR 6198.)

Cross references. — Disclosure of financial interests, see § 1-1106.02.

Prior Codifications. — 1981 Ed., § 36-603. 1973 Ed., § 36-803.

Effect of amendments. — D.C. Law 16-305, in the section heading, substituted "Other Persons with Severe Disabilities" for "Other Severely Handicapped"; and in subsec. (a), substituted "Individuals with Severe Disabilities" for "Severely Handicapped", "individuals with severe disabilities" for "severely handicapped", and "consumers with severe disabilities" for "handicapped consumers".

Legislative history of Law 2-128. — For legislative history of D.C. Law 2-128, see Historical and Statutory Notes following § 32-301.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 32-241.

Transfer of Functions. — The Department of Human Resources was replaced by the Department of Human Services, pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

The functions of the Department of General Services were transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

§ 32-304. Committee for Purchase of Products and Services of the Blind and Other Individuals with Severe Disabilities — Duties.

(a) The duties of the Committee shall be as follows:

(1) To determine the price of all products manufactured and services provided by the blind and other individuals with severe disabilities and offered for sale to the various agencies of the District government by any qualified nonprofit agency for the blind and other individuals with severe disabilities. The price shall be set to recover the cost of raw materials for the workshops, labor, overhead and delivery costs, but shall not include profit;

(2) To revise such prices from time to time in accordance with changing cost factors; and

(3) To make such rules and regulations regarding specifications, time of delivery, authorization of a central nonprofit agency to facilitate the distribution of orders among agencies for the blind and other individuals with severe disabilities and other relevant matters of procedure as shall be necessary to carry out the purposes of this chapter.

(b) The Committee shall establish and publish a list of products produced by any qualified nonprofit agency for the blind and other individuals with severe disabilities and the services provided by any such agency which the Committee determines are suitable for procurement by agencies of the District government pursuant to this chapter. This procurement list and revisions thereof shall be distributed to all purchasing officers of the District government.

(Mar. 3, 1979, D.C. Law 2-128, § 5, 25 DCR 2236; Apr. 24, 2007, D.C. Law 16-305, § 45(d), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 36-604. 1973 Ed., § 36-804.

Effect of amendments. — D.C. Law 16-305 substituted "individuals with severe disabilities" for "severely handicapped" wherever it appeared in the section.

Legislative history of Law 2-128. — For legislative history of D.C. Law 2-128, see Historical and Statutory Notes following § 32-301.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 32-241.

§ 32-305. Procurement requirements for District government.

(a) If any agency of the District government intends to procure any product or service on the procurement list, that agency shall, in accordance with rules and regulations not contrary to the procurement laws and rules and regulations of the District of Columbia and of the Committee, procure such product or service, at the price established by the Committee, from a qualified nonprofit

agency for the blind and other individuals with severe disabilities if the product or service is available within the period required by that agency and if the product meets the minimum quality standards required by the agency; provided, that this chapter shall not apply in any cases where products or services are available for procurement from any agency of the District government and procurement therefrom is required under the provisions of any law in effect on the date of enactment of this chapter. These procurement actions shall not abrogate any existing contractual agreements for goods or services but shall only apply after the termination of existing contractual agreements.

(b) In furthering the purposes of this chapter and in contributing to the economy of the District government, it is the intent of the Council that there be close cooperation between the Committee and any agency of the District government from which procurement of products or services is required under the provisions of any law in effect on the date of enactment of this chapter. The Committee and any such agency of the District government are authorized to enter into such contractual agreements, cooperative working relationships or other arrangements as may be determined to be necessary for effective coordination and efficient realization of the objectives of this chapter and any other law requiring procurement of products or services from any agency of the District government.

(Mar. 3, 1979, D.C. Law 2-128, § 6, 25 DCR 2236; Apr. 24, 2007, D.C. Law 16-305, § 45(e), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 36-605. 1973 Ed., § 36-805.

Effect of amendments. — D.C. Law 16-305, in subsec. (a), substituted "individuals with severe disabilities" for "severely handicapped".

Legislative history of Law 2-128. — For legislative history of D.C. Law 2-128, see Historical and Statutory Notes following § 32-301.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 32-241.

Subchapter II. Rehabilitation Services Program.

§ 32-331. Establishment of the Rehabilitation Services Program.

(a) There is established a Rehabilitation Services Program that shall provide comprehensive, coordinated, efficient, and accountable federally subsidized services to individuals with disabilities, including individuals with significant disabilities, to assist those individuals in achieving gainful employment in accordance with the requirements of the Rehabilitation Act of 1973, approved August 7, 1998 (112 Stat. 1116; 29 U.S.C. § 720 et seq.).

(b) The Mayor shall establish an economic needs test to be used in determining the ability of applicants for and recipients of vocational rehabilitation services to contribute to the payment of the costs of the vocational rehabilitation services.

(Apr. 12, 2005, D.C. Law 15-332, § 2, 52 DCR 1989.)

Temporary Addition of Section. — For temporary (225 day) amendment of section, see § 2 of Rehabilitation Services Program Establishment Temporary Act of 2002 (D.C. Law 14-138, May 21, 2002, law notification 49 DCR 5055).

For temporary (225 day) amendment of section, see § 2 of Rehabilitation Services Program Establishment Temporary Act of 2003 (D.C. Law 14-290, April 4, 2003, law notification 50 DCR 5848).

For temporary (225 day) amendment of section, see § 2 of Rehabilitation Services Program Establishment Temporary Act of 2003 (D.C. Law 15-99, March 10, 2004, law notification 51 DCR 3619).

For temporary (225 day) amendment of section, see § 2 of Rehabilitation Services Program Establishment Temporary Act of 2004 (D.C. Law 15-250, March 17, 2003, law notification 52 DCR 4126).

Emergency legislation. — For temporary (90 day) addition, see § 2 of Rehabilitation Services Program Establishment Emergency Act of 2002 (D.C. Act 14-284, February 25, 2002, 49 DCR 2311).

For temporary (90 day) addition, see § 2 of Rehabilitation Services Program Establishment Second Emergency Act of 2002 (D.C. Act 14-596, January 7, 2003, 50 DCR 650).

For temporary (90 day) addition, see § 2 of Rehabilitation Services Program Establishment Congressional Review Emergency Act of 2003 (D.C. Act 15-72, April 16, 2003, 50 DCR 3612).

For temporary (90 day) addition, see § 2 of Rehabilitation Services Program Establishment Emergency Act of 2003 (D.C. Act 15-235, November 25, 2003, 50 DCR 10737).

For temporary (90 day) addition, see § 2 of Rehabilitation Services Program Establishment Congressional Review Emergency Act of 2004 (D.C. Act 15-358, February 19, 2004, 51 DCR 2576).

For temporary (90 day) addition, see § 2 of Rehabilitation Services Program Establishment Emergency Act of 2004 (D.C. Act 15-559, October 26, 2004, 51 DCR 10378).

For temporary (90 day) addition, see § 2 of Rehabilitation Services Program Establishment Congressional Review Emergency Act of 2005 (D.C. Act 16-9, January 19, 2005, 52 DCR 2694).

Legislative history of Law 2-128. — Law 2-128, the "Employment Opportunities Act of 1978," was introduced in Council and assigned Bill No. 2-151, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 11, 1978, and July 25, 1978, respectively. Signed by the Mayor on August 17, 1978, it was assigned Act No. 2-263 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-332. — Law 15-332, the "Rehabilitation Services Program Establishment Act of 2004", was introduced in Council and assigned Bill No. 15-287 which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-741 and transmitted to both Houses of Congress for its review. D.C. Law 15-332 became effective on April 12, 2005.

§ 32-331.01. Grant and contract authority.

The Rehabilitation Services Program may:

(1) Receive and administer grants, as necessary, to provide services to assist individuals with disabilities in achieving or maintaining gainful employment; and

(2) Enter into contracts or other agreements, as necessary, to provide services or support to assist individuals with disabilities in achieving or maintaining gainful employment.

(Apr. 12, 2005, D.C. Law 15-332, § 2a, as added Sept. 18, 2007, D.C. Law 17-20, § 5002, 54 DCR 7052.)

Emergency legislation. — For temporary (90 day) addition, see § 5002 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — For Law 17-20, see notes following § 32-242.

Short title. — Short title: Section 5001 of D.C. Law 17-20 provided that subtitle A of title V of the act may be cited as the "Rehabilitation Services Program Amendment Act of 2007".

§ 32-332. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this subchapter.

(Apr. 12, 2005, D.C. Law 15-332, § 3, 52 DCR 1989.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Rehabilitation Services Program Establishment Temporary Act of 2002 (D.C. Law 14-138, May 21, 2002, law notification 49 DCR 5055).

For temporary (225 day) amendment of section, see § 3 of Rehabilitation Services Program Establishment Temporary Act of 2003 (D.C. Law 14-290, April 4, 2003, law notification 50 DCR 5848).

For temporary (225 day) amendment of section, see § 3 of Rehabilitation Services Program Establishment Temporary Act of 2003 (D.C. Law 15-99, March 10, 2004, law notification 51 DCR 3619).

For temporary (225 day) amendment of section, see § 3 of Rehabilitation Services Program Establishment Temporary Act of 2004 (D.C. Law 15-250, March 17, 2003, law notification 52 DCR 4126).

Emergency legislation. — For temporary (90 day) addition, see § 3 of Rehabilitation Services Program Establishment Emergency Act of 2002 (D.C. Act 14-284, February 25, 2002, 49 DCR 2311).

For temporary (90 day) addition, see § 3 of Rehabilitation Services Program Establishment Second Emergency Act of 2002 (D.C. Act 14-596, January 7, 2003, 50 DCR 650).

For temporary (90 day) addition, see § 3 of Rehabilitation Services Program Establishment Congressional Review Emergency Act of 2003 (D.C. Act 15-72, April 16, 2003, 50 DCR 3612).

For temporary (90 day) addition, see § 3 of Rehabilitation Services Program Establishment Emergency Act of 2003 (D.C. Act 15-235, November 25, 2003, 50 DCR 10737).

For temporary (90 day) addition, see § 3 of Rehabilitation Services Program Establishment Congressional Review Emergency Act of 2004 (D.C. Act 15-358, February 19, 2004, 51 DCR 2576).

For temporary (90 day) addition, see § 3 of Rehabilitation Services Program Establishment Emergency Act of 2004 (D.C. Act 15-559, October 26, 2004, 51 DCR 10378).

For temporary (90 day) addition, see § 3 of Rehabilitation Services Program Establishment Congressional Review Emergency Act of 2005 (D.C. Act 16-9, January 19, 2005, 52 DCR 2694).

Legislative history of Law 15-332. — For Law 15-332, see notes following § 32-331.

CHAPTER 4. EMPLOYMENT SERVICES LICENSING AND REGULATION.

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§ 32-401. Definitions.

For the purposes of this chapter the term:

(1) "District" means the District of Columbia.

(2) "Employer" means any individual or business which employs 1 or more individuals and which receives or seeks to receive the services of an employment agency or employer-paid personnel service for the purpose of obtaining employees or advice concerning employees.

(3) "Employer-paid personnel service" means any individual, partnership, association, corporation, contractor, or subcontractor in the District who, for a fee, procures, offers, or attempts to procure job-seekers for employers, or provides employment advice or counseling to employers or to other persons designated by employers, and who is compensated solely by employers and does not in any way hold any job-seeker liable for fees. Except for the purposes of § 32-402(a), § 32-406(e)(6), § 32-408, and § 32-414(a), the term "employer-paid personnel service" shall not mean an executive search firm which is paid solely by employers and which acts as a consultant to employers to identify, appraise, or recommend individuals for executive, managerial, or professional positions, and shall not mean an outplacement consulting firm which is paid solely by employers to provide employment advice to employees.

(4) "Employment agency" means any individual, partnership, association, corporation, contractor, or subcontractor in the District who, for a fee, procures, offers, or attempts to procure job-seekers for employers or employment for job-seekers, and whose fees are charged in whole or in part to the job-seekers contracting for those services.

(5) "Employment counseling service" means any individual, partnership, association, corporation, contractor, or subcontractor in the District who, for a fee, provides, offers, or implies the offer of counseling, evaluating, testing, marketing, or advising job-seekers concerning career decisions, or the procurement of employment; who does not directly procure or attempt to procure employment for job-seekers; and whose fees are charged in whole or in part to the job-seekers contracting for those services.

(6) "Employment counselor" means any placement manager, placement director, counselor, interviewer, or any other person employed by an employ-

ment agency, employment counseling service, or employer-paid personnel service who interviews, counsels, or advises job-seekers seeking or receiving the services of the employment agency, employment counseling service, or employer-paid personnel service. The term "employment counselor" shall not include employees of an employment agency, employment counseling service, or employer-paid personnel service who are primarily engaged in interviewing, counseling, or advising employers, or in research, management, or clerical operations.

(7) "Fee" means money or other valuable consideration required or received by an employment agency, employment counseling service, employer-paid personnel service, or job listing service in payment for its services.

(7A) "Gender identity or expression" shall have the same meaning as provided in § 2-1401.02(12A).

(8) "Job listing service" means any individual, partnership, association, corporation, contractor, or subcontractor in the District who, for a fee, provides to any purchaser a list of job openings, and who does not provide, offer, or imply the offer of any service related to employment, employment counseling, or the procurement of employment.

(9) "Job-seeker" means any individual who receives or seeks to receive the services of an employment agency, employment counseling service, or employer-paid personnel service for the purpose of obtaining or considering new employment.

(10) "Mayor" means the Mayor of the District of Columbia.

(Mar. 13, 1985, D.C. Law 5-136, § 2, 31 DCR 5727; June 25, 2008, D.C. Law 17-177, § 17(a), 55 DCR 3696; Mar. 25, 2009, D.C. Law 17-353, § 236(b), 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 36-1001.

Effect of amendments. — D.C. Law 17-177 added par. (7A).

D.C. Law 17-353 validated a previously made technical correction in par. (7A).

Legislative history of Law 5-136. — Law 5-136, the "Employment Services Licensing and Regulation Act of 1984," was introduced in Council and assigned Bill No. 5-280, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on September 12, 1984, and October 9, 1984, respectively. Signed by the Mayor on October 25, 1984, it was assigned Act No. 5-194 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-177. — Law 17-177, the "Prohibition of Discrimination on the Basis of Gender Identity and Expression Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-330, which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on February 5, 2008, and March 4, 2008, respectively. Signed by the Mayor on March 19, 2008, it was assigned Act No. 17-329 and transmitted to both Houses of Congress for its review. D.C. Law 17-177 became effective on June 25, 2008.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 32-101.

§ 32-402. Licensing requirements for employment agencies, employment counseling services, employer-paid personnel services, job listing services, and employment counselors.

(a)(1) No individual, partnership, association, corporation, contractor, or

subcontractor shall operate an employment agency, employment counseling service, or employer-paid personnel service in the District without first obtaining a license for that purpose from the Mayor.

(2) All licenses to operate an employment agency, employment counseling service, or employer-paid personnel service shall be issued for 1 year and may be renewed.

(3) Each applicant for a license shall file with the Mayor a completed application on a form prescribed and furnished by the Mayor. The application shall be signed by the applicant and shall be notarized.

(A) The application shall list the addresses of all of the applicant's offices in the District and shall identify the person who is to manage the day-to-day operations of each office.

(B) If the applicant is a corporation, the application shall state the names and home addresses of all the officers and directors of the corporation and shall be signed and sworn to by the president, treasurer, and secretary of the corporation.

(C) If the applicant is a partnership, the application shall state the names and home addresses of all partners and shall be signed and sworn to by all of them.

(D) The application shall identify the business experience of the applicant for the 10 years preceding the date of the application. If the applicant is a corporation or a partnership, the application shall identify the business experience for the preceding 10 years of each partner in the partnership or of the president, treasurer, and secretary of the corporation.

(4) Each applicant for a license as an employment agency or employment counseling service shall file with the application 3 copies of its contract for services to job-seekers. The Mayor shall not issue a license until he is satisfied that the contract complies with this chapter and with rules and regulations issued pursuant to this chapter.

(5) Prior to receiving a license, each applicant approved for a license shall pay an annual license fee of $500.

(6) Upon receiving an application for a license, the Mayor shall investigate the business integrity and financial standing of the applicant.

(7) The application shall be rejected if the Mayor finds specific and articulable facts showing that the applicant, any officer or director of an applicant corporation, or any partner of an applicant partnership:

(A) Has a record of failing to meet significant financial obligations;

(B) Has been convicted of any federal, state, District, or municipal offense involving fraud or deceptive business practices in the 10 years preceding the date of the application;

(C) Has engaged in fraud, deceit, or misrepresentation of any material fact in attempting to procure any license under this chapter; or

(D) Was or is an owner, partner, or corporate officer of any business whose license was revoked or that was otherwise caused to cease operations by action of any state or federal agency or court because of violations of law or regulations relating to deceptive or unfair practices in the conduct of business.

(8) To apply for renewal of a license, a licensee shall, on or before the 30th day prior to the date of expiration of the license, submit an application to the

Mayor on a form prescribed and furnished by the Mayor and pay the annual license fee. The Mayor shall renew the license after determining that the licensee complies with the provisions of this chapter, rules and regulations issued pursuant to this chapter, and other applicable laws, rules, and regulations of the District.

(b)(1) No individual may perform the duties of an employment counselor without first obtaining a license for that purpose from the Mayor.

(2) An applicant for an employment counselor's license shall file a completed and notarized application with the Mayor on a form prescribed and furnished by the Mayor, pay an application fee in the amount established by the Mayor, and pass an examination established by the Mayor to test the applicant's knowledge of basic employment counseling skills and the laws, rules, and regulations applicable to employment counseling in the District.

(3) The Mayor shall administer the examination to each applicant no later than 10 days after receiving the application, and shall notify the applicant of the results of the examination no later than 5 days after the applicant takes the examination.

(4) The Mayor may reject any application if he finds that the applicant:

(A) Has engaged in any practice prohibited by § 32-404(o);

(B) Has engaged in fraud, deceit, or misrepresentation of any material fact in attempting to procure any license under this chapter; or

(C) Has had a license to practice employment counseling or other business revoked or was otherwise caused to cease operations by action of any state or federal agency or court because of violation of laws or regulations relating to deceptive or unfair practices in the conduct of business.

(5) All employment counselor licenses shall state the name and location of the employment agency, employment counseling service, or employer-paid personnel service by which the employment counselor is employed.

(6) All employment counselor licenses shall remain in effect as long as the licensee continues to be employed with the employment agency, employment counseling service, or employer-paid personnel service stated on the license, and complies with the provisions of this chapter and rules and regulations issued pursuant to this chapter.

(7) The employment counselor and the employment agency, employment counseling service, or employer-paid personnel service shall notify the Mayor within 5 days after termination of the employment counselor's employment. The employment counselor may apply for license renewal upon obtaining employment with another employment agency, employment counseling service, or employer-paid personnel service.

(c)(1) The Mayor shall approve or reject applications for licensure as an employment agency, employment counseling service, employer-paid personnel service, or employment counselor within 60 days from the date the application is received by the Mayor.

(2) The Mayor may issue a 45-day provisional license to an applicant for licensure as an employment counselor who has complied with all requirements of subsection (b)(2) of this section and who has not had an employment counselor's license suspended or revoked by the Mayor.

(3) Any applicant who is aggrieved by the rejection of an application by the Mayor shall have the right to a hearing before the Mayor pursuant to § 2-509, which hearing shall be conducted within 10 days following the aggrieved party's formal request for the hearing.

(d) Each employment agency, employment counseling service, employer-paid personnel service, and employment counselor licensed pursuant to this chapter shall post the license in a prominent place visible to clients in each place of business maintained by the licensee.

(e) Any license issued pursuant to this section shall be issued as an Employment Services endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(Mar. 13, 1985, D.C. Law 5-136, § 3, 31 DCR 5727; Apr. 20, 1999, D.C. Law 12-261, § 2003(nn), 46 DCR 3142; Apr. 12, 2000, D.C. Law 13-91, § 149, 47 DCR 520; Oct. 28, 2003, D.C. Law 15-38, § 3(aa), 50 DCR 6913; Apr. 13, 2005, D.C. Law 15-354, § 51, 52 DCR 2638.)

Section references. — This section is referred to in § 32-401.

Prior Codifications. — 1981 Ed., § 36-1002.

Effect of amendments. — D.C. Law 13-91 validated a previously made technical amendment in subsec. (a)(2).

D.C. Law 15-38, in subsec. (e), substituted "Employment Services endorsement to a basic business license under the basic" for "a Class B Employment Services endorsement to a master business license under the master".

D.C. Law 15-354, in subsec. (e), validated previously made technical corrections.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(aa) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

Legislative history of Law 5-136. — For legislative history of D.C. Law 5-136, see Historical and Statutory Notes following § 32-401.

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second reading on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615, and transmitted to both Houses of Congress for review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 15-38. — Law 15-38, the "Streamlining Regulation Act of 2003", was introduced in Council and assigned Bill No. 15-19, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on August 11, 2003, it was assigned Act No. 15-146 and transmitted to both Houses of Congress for its review. D.C. Law 15-38 became effective on October 28, 2003.

Legislative history of Law 15-354. — Law 15-354, the "Technical Amendments Act of 2004", was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

CASE NOTES

In general.

New York recruiting and consulting firm was not required to be licensed under District of Columbia as "employer-paid personnel service" in order to facilitate merger between two firms. D.C. Code 1981, § 36-1002(a)(1). A-L Assoc.,

Inc. v. Jorden, 963 F.2d 1529, 1992 U.S. App. LEXIS 10361 (C.A.D.C. 1992).

Defendant may not resist suit for compensation on ground that plaintiff failed to register under District of Columbia's licensing statute unless statute covers services for which compensation is sought, as opposed to plaintiff's services generally. D.C. Code 1981, §§ 36-1001(3), 36-1002(a). A-L Assoc., Inc. v. Jorden, 963 F.2d 1529, 1992 U.S. App. LEXIS 10361 (C.A.D.C. 1992).

§ 32-403. Bonding requirements.

(a) Every applicant for a license to operate an employment agency, employment counseling service, or job listing service, prior to receiving a license, shall file with the Mayor a bond signed by the applicant as principal and by a surety company authorized to do business in the District as a surety.

(b)(1) Any employment agency or employment counseling service whose average fee for job-seekers is $2,000 or more and which enters into contracts with 100 or more job-seekers per year shall file a bond in the amount of $100,000.

(2) Any employment agency or employment counseling service whose average fee for job-seekers is less than $2,000 or which enters into contracts with fewer than 100 job-seekers per year shall file a bond in the amount of $50,000.

(3) Each job listing service shall file a bond in the amount of $5,000.

(c) Each bond shall be in favor of the District for the benefit of any job-seeker injured by the employment agency or employment counseling service or any purchaser of job lists from the job listing service when the job-seeker or purchaser is unable to recover directly from the licensee for the injury. The liability of the surety under any bond may not exceed the amount of the bond, regardless of the number or amount of claims filed. If the claims filed should exceed the amount of the bond, the surety shall pay the amount of the bond to the Mayor for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

(d) Upon commencement of any action or actions against the surety based upon the bond for an aggregate amount exceeding the amount of the bond, the Mayor may require the licensee to obtain an additional bond in an amount to be determined by the Mayor. The licensee's failure to file the new and additional bond within 30 days from the date of the Mayor's requirement shall constitute cause for revocation of the license.

(e) Each applicant for renewal of a license to operate an employment agency, employment counseling service, or job listing service, prior to receiving the license renewal, shall file with the Mayor evidence that the bond required by this section remains in force.

(f) The Mayor may accept an irrevocable letter of credit from a financial institution authorized to do business in the District, or evidence of cash deposited in an escrow account in a financial institution in the District in the name of the licensee and the District in lieu of the bond required by this section. The letter of credit or escrow account shall be in the amounts required by subsection (b) of this section.

(Mar. 13, 1985, D.C. Law 5-136, § 4, 31 DCR 5727.)

Prior Codifications. — 1981 Ed., § 36-1003.

Legislative history of Law 5-136. — For legislative history of D.C. Law 5-136, see Historical and Statutory Notes following § 32-401.

§ 32-404. Requirements for operation of employment agencies.

(a) Each employment agency shall maintain a file of all its advertisements identified by date and publication. All advertisements and other promotional material shall carry the name under which the employment agency is licensed to do business.

(b) Any employment agency which uses any statistics regarding its placement rate, success rate, or other similar statistics in its advertising, promotional materials, or oral or written statements to job-seekers shall maintain records from which the Mayor can determine the accuracy of these statistics.

(c) Each employment agency shall keep detailed records of the following information on forms approved by the Mayor:

(1) The names, home addresses, and telephone numbers of all job-seekers contracting with the employment agency;

(2) A log of all activities performed by the employment agency for the benefit of each job-seeker contracting with the employment agency, including, but not limited to, the dates of job interviews arranged by the employment agency for each job-seeker and the identity of the employer with whom each interview was arranged;

(3) Copies of each contract between the employment agency and each job-seeker;

(4) The name of each employer placing a job order with the employment agency, a description of each job order, and the identity of each job-seeker referred to the employer for each job order;

(5) The identity of each employer and job-seeker for each job placement resulting from the activities performed by the employment agency and a description of the job in which the job-seeker was placed; and

(6) Any other information determined by the Mayor to be necessary to accomplish the purposes of this chapter.

(d) The records required by subsections (a) through (c) of this section shall be maintained for 4 years from the date the record was made.

(e) Each employment agency shall file with the Mayor a schedule of fees to be charged to job-seekers. These fees may be changed by filing an amended schedule showing the changes at least 30 days before the changes are to take effect. It shall be unlawful to charge, demand, or receive a fee greater than is specified in the most recent schedule filed with the Mayor.

(f)(1) Prior to performing any service for a job-seeker, an employment agency shall enter into a written contract with the job-seeker.

(2) The contract required by this subsection shall be written in simple, easily understandable language.

(3) The contract shall set forth the specific services to be provided, the fee charged by the employment agency for each service, the total fee for all services to be provided by the employment agency, the period of time during which the services are to be provided, and the schedule for payment of fees.

(4) The employment agency shall provide a copy of the contract to the job-seeker at the time the contract is signed by the job-seeker.

(5) The job-seeker shall have the right to cancel any contract with an employment agency by providing written notification to the employment agency within 3 days from the date of signing the contract.

(6) Each contract between an employment agency and a job-seeker shall contain the following notice in type which is more prominent than the type used for the remainder of the contract:

NOTICE

YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT FOR ANY REASON WITHIN 3 DAYS FROM THE DATE OF SIGNING. IF YOU CHOOSE TO CANCEL THIS CONTRACT, YOU MUST PROVIDE (name of employment agency) WRITTEN NOTIFICATION OF YOUR CANCELLATION WITHIN 3 DAYS.

IF YOU FEEL THAT YOU HAVE BEEN THE VICTIM OF AN UNLAWFUL TRADE PRACTICE RELATED TO THIS CONTRACT, YOU HAVE THE RIGHT TO FILE A COMPLAINT WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS OF THE DISTRICT OF COLUMBIA.

(g) No employment agency shall charge any job-seeker a registration fee or collect from any job-seeker any payment for any service in advance of performing the service.

(h) No employment agency shall charge, demand, or receive any fee from a job-seeker unless the employment agency has made an appointment for the job-seeker for a job interview with an employer.

(i) Any attempt by any employment agency or its representative to collect a fee from a job-seeker who has accepted a job with an employer with which the employment agency did not make an appointment for the job-seeker shall be considered fraud and grounds for suspension of the employment agency's license. Any job-seeker aggrieved by this improper attempt to collect a fee may file a complaint with and request a hearing by the Mayor.

(j)(1) No employment agency, as a condition of providing service to a job-seeker, shall require the job-seeker to execute any document prior to acceptance of a job which may constitute a promissory note or authorization to confess judgment.

(2) Any promissory note executed by a person in consideration of an employment agency finding that person employment shall not be held in due course for a period of 120 days after the commencement of employment even though the holder during that period meets all the requirements set forth in § 28:3-302.

(k) Employment shall not be considered permanent when, within 12 weeks after employment commences, that employment is terminated by the employer through no fault of the job-seeker, or is terminated by the job-seeker if the employment is not as represented to the job-seeker. In that event, the employment agency making the job placement shall refund to the job-seeker the portion of the placement fee that exceeds 1/12 of that fee for each week or portion thereof that the employment continued.

(l) In the event the job-seeker is discharged for cause or voluntarily leaves employment without just cause within 12 weeks after employment commences, the employment agency making the job placement may charge the job-seeker a fee not to exceed 75% of the permanent placement fee.

(m) If an employer agrees to pay an employment agency fee, but through no fault of the job-seeker does not, the employment agency shall have a right of action against the employer, but not against the job-seeker.

(n) Each employment agency shall give to every job-seeker a numbered receipt for each payment received by the employment agency from the job-seeker. Each receipt shall have printed or written on it the name of the job-seeker, the date and amount of the payment, the name and address of the employment agency, the purpose for which the payment was made, and the legible signature of the person receiving the payment.

(o) No employment agency doing business in the District, or any person employed by or acting as an agent of that employment agency, shall:

(1) Knowingly make referral to any job for which the requirements, duties, or conditions violate federal or District law;

(2) Knowingly refer any job-seeker to any establishment at which a labor dispute is in progress without informing the job-seeker of the existence of the labor dispute;

(3) Refer any job-seeker to any employer for a job that the employment agency does not know to be open, unless the employer specifically requests to see the particular job-seeker;

(4) Refer any job-seeker to an employer without making an appointment for the job-seeker with the employer;

(5) Refer any job-seeker to any employer for a position for which the employment agency knows the job-seeker is not qualified;

(6) Advertise a job opening unless the employment agency has a bona fide employer order for a job-seeker for that job opening;

(7) Solicit, persuade, or induce any job-seeker to leave any job in which the employment agency placed the job-seeker;

(8) Solicit, persuade, or induce any employer to discharge any job-seeker;

(9) Offer, divide, or share, directly or indirectly, any fee, charge, or compensation received or to be received from any job-seeker with any employer or person in any way connected with the employer's business;

(10) Place or attempt to place any person under the age of 18 in any employment where the employment would violate any compulsory education or child labor laws;

(11) Enter into any contract with any person under 18 years of age who is not an emancipated minor unless that person's parent or guardian co-signs the contract; or

(12) Violate any provision of Chapter 39 of Title 28.

(Mar. 13, 1985, D.C. Law 5-136, § 5, 31 DCR 5727.)

Section references. — This section is referred to in §§ 28-3904 and 32-402.

Prior Codifications. — 1981 Ed., § 36-1004.

Legislative history of Law 5-136. — For legislative history of D.C. Law 5-136, see Historical and Statutory Notes following § 32-401.

§ 32-405. Requirements for operation of employment counseling services.

(a) Each employment counseling service shall maintain a file of all of its advertisements identified by date and publication. All advertisements and other promotional material shall carry the name under which the employment counseling service is licensed to do business, and shall carry a notice stating that the employment counseling service is not an employment agency, does not arrange job interviews, and does not provide job placement services.

(b) Any employment counseling service which uses any statistics regarding its success rate or other similar statistics in its advertising, promotional materials, or oral or written statements to job-seekers shall maintain records from which the Mayor can determine the accuracy of these statistics.

(c) Each employment counseling service shall keep detailed records of the following information on forms approved by the Mayor:

(1) The names, home addresses, and telephone numbers of all job-seekers contracting with the employment counseling service;

(2) A log of all activities performed by the employment counseling service for the benefit of each job-seeker;

(3) Copies of each contract between the employment counseling service and job-seekers; and

(4) Any other information determined by the Mayor to be necessary to accomplish the purposes of this chapter.

(d) The records required by subsections (a) through (c) of this section shall be maintained for 4 years from the date the record was made.

(e) Each employment counseling service shall file with the Mayor a schedule of fees to be charged to job-seekers. These fees may be changed by filing an amended schedule showing the changes at least 30 days before the changes are to take effect. It shall be unlawful to charge, demand, or receive a fee greater than is specified in the most recent schedule filed with the Mayor.

(f)(1) Prior to performing any service for a job-seeker, an employment counseling service shall enter into a written contract with the job-seeker.

(2) The contract required by this subsection shall be written in simple, easily understandable language.

(3) The contract shall set forth the specific services to be provided, the fee charged by the employment counseling service for each service, the total fee for all services to be provided by the employment counseling service, the period of time during which the services are to be provided, and the schedule for payment of fees.

(4) The employment counseling service shall provide a copy of the contract to the job-seeker at the time the contract is signed by the job-seeker.

(5) The job-seeker shall have the right to cancel any contract with an employment counseling service by providing written notification to the employment counseling service within 3 days from the date of signing the contract.

(6) Each contract between an employment counseling service and a job-seeker shall contain the following notice in type which is more prominent than the type used for the remainder of the contract:

NOTICE

YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT FOR ANY REASON WITHIN 3 DAYS FROM THE DATE OF SIGNING. IF YOU CHOOSE TO CANCEL THIS CONTRACT, YOU MUST PROVIDE (name of employment counseling service) WRITTEN NOTIFICATION OF YOUR CANCELLATION WITHIN 3 DAYS.

IF YOU FEEL THAT YOU HAVE BEEN THE VICTIM OF AN UNLAWFUL TRADE PRACTICE RELATED TO THIS CONTRACT, YOU HAVE THE RIGHT TO FILE A COMPLAINT WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS OF THE DISTRICT OF COLUMBIA.

(g) No employment counseling service shall charge any job-seeker a registration fee or collect from any job-seeker any payment for any service in advance of performing the service.

(h) Each employment counseling service shall give to every job-seeker a numbered receipt for each payment received by the employment counseling service from the job-seeker. Each receipt shall have printed or written on it the name of the job-seeker, the date and amount of the payment, the name and address of the employment agency, the purpose for which the payment was made, and the legible signature of the person receiving payment.

(i) No employment counseling service doing business in the District or any person employed by or acting as an agent of that employment counseling service shall:

(1) Charge any job-seeker any fee based on the job-seeker's desired income;

(2) State, imply, or in any way lead job-seekers to believe that the employment counseling service makes appointments with employers for job interviews for job-seekers or secures employment for job-seekers;

(3) Enter into any contract with any person under 18 years of age, who is not an emancipated minor, unless that person's parent or guardian co-signs the contract; or

(4) Violate any provision of Chapter 39 of Title 28.

(Mar. 13, 1985, D.C. Law 5-136, § 6, 31 DCR 5727.)

Section references. — This section is referred to in § 28-3904.

Prior Codifications. — 1981 Ed., § 36-1005.

Legislative history of Law 5-136. — For legislative history of D.C. Law 5-136, see Historical and Statutory Notes following § 32-401.

§ 32-406. Requirements for operation of employer-paid personnel services.

(a) Each employer-paid personnel service shall maintain a file of all of its advertisements identified by date and publication. All advertisements and other promotional material shall carry the name under which the employer-paid personnel service is licensed to do business.

(b) Any employer-paid personnel service which uses any statistics regarding its placement rate, success rate, or other similar statistics in its advertising,

promotional materials, or oral or written statements to job-seekers shall maintain records from which the Mayor can determine the accuracy of these statistics.

(c) Each employer-paid personnel service shall keep detailed records of the following information on forms approved by the Mayor:

(1) The names, home addresses, and telephone numbers of all job-seekers interviewed by the employer-paid personnel service;

(2) The name of each employer placing a job order with the employer-paid personnel service, a description of each job order, and the identity of each job-seeker referred to the employer for each job order;

(3) The identity of each employer and job-seeker for each job placement resulting from the activities performed by the employer-paid personnel service and a description of the job in which the job-seeker was placed; and

(4) Any other information determined by the Mayor to be necessary to accomplish the purposes of this chapter.

(d) The records required by subsections (a) through (c) of this section shall be maintained for 4 years from the date the record is made.

(e) No employer-paid personnel service doing business in the District, or any person employed by or acting as an agent of that employment agency, shall:

(1) Knowingly make referrals to any job for which the requirements, duties, or conditions violate federal or District law;

(2) Knowingly refer any job-seeker to any establishment at which a labor dispute is in progress without informing the job-seeker of the existence of the labor dispute;

(3) Advertise a job opening unless the employer-paid personnel service has on file a bona fide employer order for a job-seeker for that job opening;

(4) Solicit, persuade, or induce any job-seeker to leave any job in which the employer-paid personnel service placed the job-seeker;

(5) Place or attempt to place any person under the age of 18 in any employment where the employment would violate any compulsory education or child labor laws; or

(6) Violate any provision of Chapter 39 of Title 28.

(Mar. 13, 1985, D.C. Law 5-136, § 7, 31 DCR 5727.)

Section references. — This section is referred to in §§ 28-3904 and 32-401.

Prior Codifications. — 1981 Ed., § 36-1006.

Legislative history of Law 5-136. — For legislative history of D.C. Law 5-136, see Historical and Statutory Notes following § 32-401.

§ 32-407. Requirements for operation of job listing services.

(a) Each job listing service shall maintain a file of all its advertisements identified by date and publication. All advertisements and other promotional material shall carry the name under which the job listing service is licensed to do business.

(b) Any job listing service which uses any statistics regarding its success rate or other similar statistics in its advertising, promotional materials, or oral

or written statements to purchasers or potential purchasers of job lists shall maintain records from which the Mayor can determine the accuracy of these statistics.

(c) Each job listing service shall keep detailed records on forms approved by the Mayor of the sources of information used for the preparation of job lists offered for sale.

(d) The records required by subsections (a) through (c) of this section shall be maintained for 4 years from the date the record was made.

(e) Each job listing service shall identify, on each job list offered for sale, its source of information for the jobs included on that list when the source of information is a publication or other public record.

(f) No job listing service doing business in the District or any person employed by or acting as an agent of that job listing service shall:

(1) Include on any job list offered for sale any job which the job listing service does not know to be vacant within the 15-day period immediately preceding the date the job list is offered for sale; or

(2) Violate any provision of Chapter 39 of Title 28.

(Mar. 13, 1985, D.C. Law 5-136, § 8, 31 DCR 5727.)

Section references. — This section is referred to in § 28-3904.

Prior Codifications. — 1981 Ed., § 36-1007.

Legislative history of Law 5-136. — For legislative history of D.C. Law 5-136, see Historical and Statutory Notes following § 32-401.

§ 32-408. Discrimination prohibited.

It shall be unlawful for any employment agency, employment counseling service, employer-paid personnel service, job listing service, or employment counselor to fail or refuse to provide service to any person for any reason based on race, color, religion, national origin, sex, age, marital status, domestic partnership, personal appearance, sexual orientation, gender identity or expression, family responsibilities, physical disability, matriculation, or political affiliation. For the purposes of this section, the term "domestic partnership" shall have the same meaning as provided in § 32-701(4).

(Mar. 13, 1985, D.C. Law 5-136, § 9, 31 DCR 5727; Apr. 24, 2007, D.C. Law 16-305, § 46, 53 DCR 6198; June 25, 2008, D.C. Law 17-177, § 17(b), 55 DCR 3696; Sept. 12, 2008, D.C. Law 17-231, § 29, 55 DCR 6758.)

Section references. — This section is referred to in § 32-401.

Prior Codifications. — 1981 Ed., § 36-1008.

Effect of amendments. — D.C. Law 16-305 substituted "disability" for "handicap".

D.C. Law 17-177 substituted "sexual orientation, gender identity or expression" for "sexual orientation".

D.C. Law 17-231 substituted "marital status, domestic partnership," for "marital status,"; and added the definition of "domestic partnership".

Legislative history of Law 5-136. — For legislative history of D.C. Law 5-136, see Historical and Statutory Notes following § 32-401.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 32-241.

Legislative history of Law 17-177. — For Law 17-177, see notes following § 32-401.

Legislative history of Law 17-231. — Law 17-231, the "Omnibus Domestic Partnership Equality Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted

on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

§ 32-409. Protection of privacy.

An employment agency, employment counseling service, employer-paid personnel service, or employment counselor shall obtain the express written authorization of a job-seeker before disclosing the job-seeker's name, home address, or telephone number to any person other than to the Mayor or his or her duly authorized representative for the purpose of conducting an investigation pursuant to § 32-410.

(Mar. 13, 1985, D.C. Law 5-136, § 10, 31 DCR 5727.)

Prior Codifications. — 1981 Ed., § 36-1009.

Legislative history of Law 5-136. — For legislative history of D.C. Law 5-136, see Historical and Statutory Notes following § 32-401.

§ 32-410. Investigations.

(a) The Mayor may investigate the manner in which all employment agencies, employment counseling services, employer-paid personnel services, and job listing services doing business in the District conduct their businesses, and may examine at any time during business hours any and all books and records of the employment agencies, employment counseling services, employer-paid personnel services, and job listing services to determine compliance with the provisions of this chapter and rules and regulations issued by the Mayor pursuant to this chapter.

(b) The Mayor may further investigate all matters which may aid in the enforcement of this chapter.

(Mar. 13, 1985, D.C. Law 5-136, § 11, 31 DCR 5727.)

Section references. — This section is referred to in § 32-409.

Prior Codifications. — 1981 Ed., § 36-1010.

Legislative history of Law 5-136. — For legislative history of D.C. Law 5-136, see Historical and Statutory Notes following § 32-401.

§ 32-411. Powers of Mayor as to witnesses.

(a) The Mayor, in the performance of any duty or the execution of any power prescribed by this chapter, may administer oaths or affirmations, certify official acts, take and cause to be taken depositions of witnesses, issue subpoenas, and compel the attendance of witnesses and production of books, papers, documents, records, and testimony.

(b) In case of failure of any person to comply with a lawful subpoena or of the refusal of any witness to produce evidence or to testify to any matter about which he or she may be lawfully interrogated, the Superior Court of the District of Columbia, upon the application of the Mayor or the Mayor's designee, may compel obedience by proceedings for contempt.

(Mar. 13, 1985, D.C. Law 5-136, § 12, 31 DCR 5727.)

Prior Codifications. — 1981 Ed., § 36-1011.

Legislative history of Law 5-136. — For legislative history of D.C. Law 5-136, see Historical and Statutory Notes following § 32-401.

§ 32-412. Cease and desist orders.

(a)(1) When the Mayor, after investigation, has cause to believe that any individual, partnership, association, corporation, contractor, or subcontractor is violating any provision of this chapter, the Mayor may issue an order requiring the alleged violator immediately to cease and desist from the violation if the Mayor has reason to believe that immediate irreparable loss and injury to the general public has occurred or will occur. The order shall be served by certified mail or delivery in person.

(2) The alleged violator may request the Mayor to hold a hearing on the alleged violation. Any request for a hearing shall be in writing and shall be made within 15 days of the service of the order.

(3) If a request for a hearing is not made, the order of the Mayor to cease and desist is final.

(4) If, after a hearing, the Mayor determines that the alleged violator is not in violation of this chapter, the Mayor shall revoke the order to cease and desist.

(b)(1) When the Mayor, after investigation, has cause to believe that any individual, partnership, association, corporation, contractor, or subcontractor is violating any provision of this chapter, and has reason to believe that immediate irreparable loss and injury to the general public has not occurred and will not occur, the Mayor shall notify the alleged violator in writing of the existence of the alleged violation.

(2) Within 15 days of receipt of this notification, the alleged violator may show cause to the Mayor in writing why the Mayor should not issue an order requiring the alleged violator to cease and desist from the violation.

(3) If the alleged violator does not respond to the Mayor's show cause request within the prescribed time period, the Mayor may issue an order requiring the alleged violator immediately to cease and desist from the violation.

(4) If the alleged violator responds to the Mayor's show cause request, the Mayor may:

(A) Terminate all proceedings against the alleged violator if, based upon the response of the alleged violator to the show cause request, the Mayor determines that there is no basis for the issuance of a cease and desist order; or

(B) Schedule a hearing, notifying the alleged violator in writing by certified mail of the date, time, and place of the hearing at least 5 days in advance of the hearing.

(5)(A) If, after a hearing, the Mayor determines that the alleged violator is in violation of this chapter, the Mayor shall order the violator to cease and desist from the violation.

(B) If, after a hearing, the Mayor determines that the alleged violator is not in violation of this chapter, the Mayor shall terminate all proceedings against the alleged violator.

(c) If any individual, partnership, association, corporation, contractor, or subcontractor fails to comply with any lawful order of the Mayor issued pursuant to this section, the Mayor may:

(1) Petition a court of competent jurisdiction to issue an order compelling compliance with the lawful order of the Mayor; or

(2) Take any other action authorized by this chapter.

(d) Section 2-509 applies to proceedings before the Mayor pursuant to this section.

(Mar. 13, 1985, D.C. Law 5-136, § 13, 31 DCR 5727.)

Prior Codifications. — 1981 Ed., § 36-1012.

Legislative history of Law 5-136. — For legislative history of D.C. Law 5-136, see Historical and Statutory Notes following § 32-401.

§ 32-413. Mediation or arbitration of disputes.

Upon receipt of a complaint against an employment agency, employment counseling service, employer-paid personnel service, job listing service, or employment counselor, the Mayor may seek to mediate the dispute or arrange for arbitration by an impartial arbitrator or panel of arbitrators.

(Mar. 13, 1985, D.C. Law 5-136, § 14, 31 DCR 5727.)

Prior Codifications. — 1981 Ed., § 36-1013.

Legislative history of Law 5-136. — For legislative history of D.C. Law 5-136, see Historical and Statutory Notes following § 32-401.

§ 32-414. Penalties.

(a) Any individual, partnership, association, corporation, contractor, or subcontractor who opens, operates, or maintains an employment agency, employment counseling service, employer-paid personnel service, or job listing service, or any person acting in the capacity of an employment counselor without first obtaining a license for that purpose shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine not to exceed $1,000 for each day the violation occurs, or to imprisonment not to exceed 1 year, or both.

(b) The Mayor may, following a hearing, revoke or suspend for a period determined by the Mayor the license of any employment agency, employment counseling service, employer-paid personnel service, job listing service, or employment counselor violating any provision of this chapter.

(c) The Mayor may, following a hearing, order an employment agency, employment counseling service, employer-paid personnel service, job listing service, or employment counselor to make restitution to a complainant for losses or expenses incurred by the complainant as a result of violations of this chapter by the employment agency, employment counseling service, employer-paid personnel service, job listing service or employment counselor.

(d) The Mayor may, following a hearing, impose a fine of not less than $100 or more than $1,000 against any employment agency, employment counseling service, employer-paid personnel service, or job listing service found in

violation of any provision of this chapter. The fine may be imposed for each violation.

(e) The Mayor may, following a hearing, impose a fine of not less than $25 or more than $500 against any employment counselor found in violation of any provision of this chapter. The fine may be imposed for each violation.

(f) Any employment agency, employment counseling service, employer-paid personnel service, job listing service, or employment counselor aggrieved by any order of the Mayor imposing fines, ordering restitution, or suspending or revoking a license may obtain a review thereof in the District of Columbia Court of Appeals pursuant to § 2-510.

(g) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or the rules or regulations issued under the authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infractions shall be pursuant to Chapter 18 of Title 2.

(Mar. 13, 1985, D.C. Law 5-136, § 15, 31 DCR 5727; Oct. 5, 1985, D.C. Law 6-42, § 403, 32 DCR 4450.)

Section references. — This section is referred to in § 32-401.

Prior Codifications. — 1981 Ed., § 36-1014.

Legislative history of Law 5-136. — For legislative history of D.C. Law 5-136, see Historical and Statutory Notes following § 32-401.

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

§ 32-415. Rules and regulations; delegation of authority.

(a) The Mayor shall issue, and may amend from time to time, rules and regulations to implement the provisions of this chapter.

(b) By issuance of a Mayor's Order, the Mayor may delegate the powers and duties assigned to the Mayor by this chapter.

(Mar. 13, 1985, D.C. Law 5-136, § 17, 31 DCR 5727.)

Prior Codifications. — 1981 Ed., § 36-1015.

Legislative history of Law 5-136. — For legislative history of D.C. Law 5-136, see Historical and Statutory Notes following § 32-401.

Delegation of Authority. — Delegation of authority pursuant to Law 5-136, see Mayor's Order 86-9, January 16, 1986.

§ 32-416. Exemptions.

The requirements of this chapter shall not apply to:

(1) Any employer who directly hires and compensates employees for the exclusive purpose of furnishing part-time or temporary help to others and does not in any way offer or attempt to place the employees in permanent jobs with any other employer;

(2) Any person conducting a business which, for a fee, prepares resumes for individuals but does not provide, offer, or imply the offer of any other service related to employment;

(3) Bona fide educational, religious, charitable, fraternal, and benevolent organizations in which no fee, commission, or other charge is made for services rendered other than ordinary membership dues or tuition fees;

(4) Bona fide labor organizations securing or attempting to secure employment for their members;

(5) Bona fide employees' organizations securing or attempting to secure employment for their members;

(6) Professional counselors whose advice and counsel to individuals concerning employment is incidental to the primary counseling services provided; or

(7) Any agency or instrumentality of the United States government or the District government.

(Mar. 13, 1985, D.C. Law 5-136, § 18, 31 DCR 5727.)

Prior Codifications. — 1981 Ed., § 36-1016.

Legislative history of Law 5-136. — For legislative history of D.C. Law 5-136, see Historical and Statutory Notes following § 32-401.

CHAPTER 5. FAMILY AND MEDICAL LEAVE.

Sec.
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§ 32-501. Definitions.

For purposes of this chapter, the term:

(1) "Employee" means any individual who has been employed by the same employer for 1 year without a break in service except for regular holiday, sick, or personal leave granted by the employer and has worked at least 1000 hours during the 12-month period immediately preceding the request for family or medical leave.

(2) "Employer" means any individual, firm, association, or corporation, any receiver or trustee of any individual firm, association, or corporation, or the legal representative of a deceased employer, including the District of Columbia ("District") government, who uses the services of another individual for pay in the District.

(3) "Employment benefit" means any benefit, other than salary or wages, provided or made available to an employee by an employer, including, but not limited to, group life, health, and disability insurance, sick and annual leave, and educational and pension benefits, regardless of whether the benefit is provided by a policy or practice of an employer or by an employee welfare benefit plan as defined in title 1, subtitle A, section 3(3) of the Employee Retirement Income Security Act of 1974, effective September 2, 1974 (88 Stat. 833; 29 U.S.C. 1002(1)).

(4) "Family member" means:

(A) A person to whom the employee is related by blood, legal custody, or marriage;

(B) A child who lives with an employee and for whom the employee permanently assumes and discharges parental responsibility; or

(C) A person with whom the employee shares or has shared, within the last year, a mutual residence and with whom the employee maintains a committed relationship.

(5) "Health care provider" means any person licensed under federal, state, or District law to provide health care services.

(6) "Public safety agency" means the Metropolitan Police Department of the District of Columbia, the Fire Department of the District of Columbia, or the Department of Corrections.

(7) "Mayor" means Mayor of the District of Columbia.

(8) "Reduced leave schedule" means leave scheduled for a fewer number of hours than an employee usually works during each workweek or workday.

(9) "Serious health condition" means a physical or mental illness, injury, or impairment that involves:

(A) Inpatient care in a hospital, hospice, or residential health care facility; or

(B) Continuing treatment or supervision at home by a health care provider or other competent individual.

(10) "Local educational agency" shall have the same meaning as the term has in section 1471(12) of the Elementary and Secondary Education Act of 1965, approved April 28, 1988 (102 Stat. 201; 20 U.S.C. 2891(12)) [omitted].

(Oct. 3, 1990, D.C. Law 8-181, § 2, 37 DCR 5043.)

Prior Codifications. — 1981 Ed., § 36-1301.

Legislative history of Law 8-181. — Law 8-181, the "District of Columbia Family and Medical Leave Act of 1990," was introduced in Council and assigned Bill No. 8-82, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 26, 1990, and July 10, 1990, respectively. Signed by the Mayor on July 20, 1990, it was assigned Act No. 8-249 and transmitted to both Houses of Congress for its review.

References in text. — The reference in (10) to "20 U.S.C. 2891(12)" is obsolete and should now read "20 U.S.C. 8801(18).".

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 8-181, the "D.C. Family and Medical Leave Act of 1990.", see Mayor's Order 91-38, March 14, 1991.

Delegation of Authority-The District of Columbia Family and Medical Leave Act of 1990, see Mayor's Order 2009-45, March 31, 2009 (56 DCR 6783).

CASE NOTES

Analysis

Construction with federal law.
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Eligible employee.
Exhaustion of administrative remedies.
Extraordinary circumstances.
Jurisdiction.
Limitation of actions.
Newly discovered evidence.
Pleadings.
Purpose.
Serious medical condition.

Construction with federal law.

Even assuming employee established prima facie case of retaliation under Family and Medical Leave Act (FMLA) and District of Columbia Family and Medical Leave Act (DCFMLA), employer had legitimate, non-discriminatory reason for termination with no evidence from employee that reason was pretextual, when employee was unable to return to work after end of her protected leave under FMLA and DCFMLA; at end of leave, employer was lawfully allowed to require employee to return to work or to lose her position, and employee made it clear she could not work after expiration of leave period. Dorsey v. Jacobson Holman, PLLC, 756 F.Supp.2d 30, 2010 U.S. Dist. LEXIS 134716 (2010).

District of Columbia courts may properly look to federal FMLA regulations and case law as persuasive authority in interpreting District of Columbia Family and Medical Leave Act (DCFMLA). Teru Chang v. Inst. for Public-Private P'ships, Inc., 846 A.2d 318, 2004 D.C. App. LEXIS 161 (2004).

Discovery.

Former employee's uncooperativeness during her deposition was not substantially justified, in her suit claiming that employer denied her medical leave in violation of District of Columbia Family and Medical Leave Act (DCFMLA), discriminated against her when she became pregnant, and failed to accommodate her panic anxiety syndrome under District of Columbia Human Rights Act (DCHRA), and thus, sanction was warranted entitling employer to award of reasonable expenses, including attorney fees and costs related to motion to compel discovery. Jackson v. CCA of Tenn., Inc., 254 F.R.D. 135, 2008 U.S. Dist. LEXIS 97063 (2008).

Former employee's medical and work history information requested at her deposition was not privileged, warranting discovery of such information in employee's suit claiming that employer denied employee medical leave in violation of District of Columbia Family and Medical Leave Act (DCFMLA), discriminated

against her when she became pregnant, and failed to accommodate her panic anxiety syndrome under District of Columbia Human Rights Act (DCHRA), since employer's inquiries relating to employee's medical and work history were not harassment, but rather, were relevant both to claims and defense. Jackson v. CCA of Tenn., Inc., 254 F.R.D. 135, 2008 U.S. Dist. LEXIS 97063 (2008).

Eligible employee.

Employee spent less than 50% of his time working in the District of Columbia, and therefore, was not an employee eligible for coverage under the District of Columbia Family Medical Leave Act (DCFMLA), where he spent periods of time in District but was hired to work out of office in Virginia and spent less than 30% of his time in District. Hopkins v. Grant Thornton Int'l, 851 F.Supp.2d 146, 2012 U.S. Dist. LEXIS 45156 (2012).

Exhaustion of administrative remedies.

Plaintiff need not exhaust administrative remedies before bringing an action under District of Columbia Family and Medical Leave Act (DCFMLA). Jackson v. Artis, 565 F.Supp.2d 148, 2008 U.S. Dist. LEXIS 55428 (2008).

Extraordinary circumstances.

Employee's own lack of due diligence, rather than extraordinary circumstances, was cause of delay in submission of medical certificates outlining employee's need for medical leave from employment in action against school district alleging violation of Family and Medical Leave Act (FMLA) and District of Columbia Family and Medical Leave Act (DCFMLA), and thus relief from judgment in favor of school district under catch-all provision of governing rule was not warranted. Lightfoot v. District of Columbia, 555 F.Supp.2d 61, 2008 U.S. Dist. LEXIS 39541 (2008), affirmed by 2008 U.S. App. LEXIS 22922 (D.C. Cir. Nov. 5, 2008).

Jurisdiction.

Limited contacts that non-resident company executives had with District of Columbia were not "separate from and in addition to" employee's allegedly unlawful termination, and thus tortious injury subsection of District of Columbia long-arm statute did not authorize personal jurisdiction over executives in former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Contacts of non-resident company executives with District of Columbia were in the course of employment, rather than based on personal contacts, and thus subsection of District of Columbia long-arm statute allowing personal jurisdiction over person transacting business in District did not authorize personal jurisdiction over executives in female former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Non-resident company executives did not have continuous and systematic contacts with District of Columbia, as required for federal district court to have general jurisdiction over two executives in their personal capacities in female former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act; during relevant time period, both executives lived and worked in Texas, neither regularly did business with District of Columbia, and they did not solicit business within the District. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Limitation of actions.

Former employee's claim against former employer for alleged violation of District of Columbia Family and Medical Leave Act (DCFMLA), which was filed more than one year after termination of former employee's employment, was barred by one-year limitations period. Jackson v. Artis, 565 F.Supp.2d 148, 2008 U.S. Dist. LEXIS 55428 (2008).

That former employee was exhausting her administrative remedies with respect to her other claims against former employer did not toll statute of limitations for her claim under District of Columbia Family and Medical Leave Act (DCFMLA). Jackson v. Artis, 565 F.Supp.2d 148, 2008 U.S. Dist. LEXIS 55428 (2008).

Newly discovered evidence.

Additional medical certificates regarding disability submitted with employee's motion for relief from judgment in action against school district alleging violation of Family and Medical Leave Act (FMLA) and District of Columbia Family and Medical Leave Act (DCFMLA) were not "newly discovered evidence" that could not have been discovered through reasonable diligence during pendency of litigation, as required for relief from judgment in favor of school district, although medical certificates were not cumulative or merely relevant for impeachment; plaintiff was aware of existence of medical certificates and was in possession of at least one throughout litigation, plaintiff failed to explain why evidence was not timely presented, and plaintiff did not exercise due diligence.

Lightfoot v. District of Columbia, 555 F.Supp.2d 61, 2008 U.S. Dist. LEXIS 39541 (2008), affirmed by 2008 U.S. App. LEXIS 22922 (D.C. Cir. Nov. 5, 2008).

Pleadings.

Former employee did not state claim against former employer under District of Columbia Family and Medical Leave Act (DCFMLA) when she failed to allege that she would have been able to return to her position at completion of her permitted leave period. Jackson v. Artis, 565 F.Supp.2d 148, 2008 U.S. Dist. LEXIS 55428 (2008).

Purpose.

District of Columbia Family and Medical Leave Act (DCFMLA) is designed to ensure job security and health benefits to an employee during a temporary period of absence resulting from a serious health condition, and DCFMLA also creates certain substantive rights, including a right to reinstatement. Wash. Convention Ctr. Auth. v. Johnson, 953 A.2d 1064, 2008 D.C. App. LEXIS 357 (2008).

Serious medical condition.

Evidence was sufficient to find that employee's hypertension was a "serious medical condition" entitling her to District of Columbia Family and Medical Leave Act (DCFMLA) protection; employee presented both medical records and testimony from her physician indicating that during her absence from work, she visited her physician, was diagnosed with hypertension, was given prescription medication, and was told to stay home from work for more than three consecutive days. Teru Chang v. Inst. for Public-Private P'ships, Inc., 846 A.2d 318, 2004 D.C. App. LEXIS 161 (2004).

§ 32-502. Family leave requirement.

(a) An employee shall be entitled to a total of 16 workweeks of family leave during any 24-month period for:

(1) The birth of a child of the employee;

(2) The placement of a child with the employee for adoption or foster care;

(3) The placement of a child with the employee for whom the employee permanently assumes and discharges parental responsibility; or

(4) The care of a family member of the employee who has a serious health condition.

(b) The entitlement to family leave under subsection (a)(1) through (3) of this section shall expire 12 months after the birth of the child or placement of the child with the employee.

(c) Subject to the requirements of subsection (h) of this section, in the case of a family member who has a serious health condition, the family leave may be taken intermittently when medically necessary.

(d) Upon agreement between the employer and the employee, family leave may be taken on a reduced leave schedule, during which the 16 workweeks of family leave may be taken over a period not to exceed 24 consecutive workweeks.

(e)(1) Except as provided in paragraphs (2) and (3) of this subsection, family leave may consist of unpaid leave.

(2) Any paid family, vacation, personal, or compensatory leave provided by an employer that the employee elects to use for family leave shall count against the 16 workweeks of allowable family leave provided in this chapter.

(3) If an employer has a program that allows an employee to use the paid leave of another employee under certain conditions, and the conditions have been met, the employee may use the paid leave as family leave and the leave shall count against the 16 workweeks of family leave provided in this chapter.

(4) Nothing in this section shall require an employer to provide paid family leave.

(f) If the necessity for leave under this section is foreseeable based on an

expected birth or placement of a child with an employee, the employee shall provide the employer with reasonable prior notice of the expected birth or placement of a child with the employee.

(g) If the necessity for family leave under this section is foreseeable based on planned medical treatment or supervision, an employee shall:

(1) Provide the employer with reasonable prior notice of the medical treatment or supervision; and

(2) Make a reasonable effort to schedule the medical treatment or supervision, subject to the approval of the health care provider of the employee or family member, in a manner that does not disrupt unduly the operations of the employer.

(h)(1) If 2 family members are employees of the same employer:

(A) The employer may limit to 16 workweeks during a 24-month period the aggregate number of family leave workweeks to which the family members are entitled; and

(B) The employer may limit to 4 workweeks during a 24-month period the aggregate number of family leave workweeks to which the family members are entitled to take simultaneously.

(2) For the purposes of this subsection, the term "same employer" includes an office, division, subdivision, or other organizational section of an employer in which both employees have the same or interrelated duties and the absence of both employees would disrupt unduly the conduct of the employer's business.

(i)(1) Information that an employee gives to an employer regarding a family relationship, pursuant to which the employee seeks to take family leave under this section, shall be used only to make a decision in regard to the provisions of this chapter. An employer shall keep any information regarding the family relationship confidential.

(2) Any employer who willfully violates this subsection shall be assessed a civil penalty of $1,000 for each offense.

(Oct. 3, 1990, D.C. Law 8-181, § 3, 37 DCR 5043.)

Cross references. — Adoption of a child, see § 32-705.

Section references. — This section is referred to in §§ 32-504, 32-505, and 32-506.

Prior Codifications. — 1981 Ed., § 36-1302.

Legislative history of Law 8-181. — For legislative history of D.C. Law 8-181, see Historical and Statutory Notes following § 32-501.

§ 32-503. Medical leave requirement.

(a) Subject to the provisions of § 32-504, any employee who becomes unable to perform the functions of the employee's position because of a serious health condition shall be entitled to medical leave for as long as the employee is unable to perform the functions, except that the medical leave shall not exceed 16 workweeks during any 24-month period. The medical leave may be taken intermittently when medically necessary.

(b)(1) Except as provided in paragraphs (2) through (4) of this subsection, medical leave may consist of unpaid leave.

(2) Any paid medical or sick leave provided by an employer that the employee elects to use for medical leave shall count against the 16 workweeks of allowable medical leave under this chapter.

(3) If an employer and employee agree that an employee may use paid vacation, personal, or compensatory leave as medical leave, the paid vacation, personal, or compensatory leave shall count against the 16 workweeks of medical leave provided in this chapter.

(4) If an employer has a program that allows an employee to use the paid leave of another employee under certain conditions, and the conditions have been met, the employee may use the paid leave as medical leave and the leave shall count against the 16 workweeks of medical leave provided in this chapter.

(c) If the need for medical leave is foreseeable based on planned medical treatment or supervision, the employee shall:

(1) Provide the employer with prior reasonable notice of the medical treatment or supervision; and

(2) Make a reasonable effort to schedule the medical treatment or supervision, subject to the approval of the health care provider of the employee, in a manner that does not disrupt unduly the operations of the employer.

(Oct. 3, 1990, D.C. Law 8-181, § 4, 37 DCR 5043.)

Section references. — This section is referred to in §§ 32-504, 32-505, and 32-506.

Prior Codifications. — 1981 Ed., § 36-1303.

Legislative history of Law 8-181. — For legislative history of D.C. Law 8-181, see Historical and Statutory Notes following § 32-501.

CASE NOTES

Analysis

Discovery.
In general.
Jurisdiction.
Limitation of actions.
Morning sickness.
Payment and source of payment during leave.
Questions of fact.
Reduction in force.

Discovery.

Former employee's uncooperativeness during her deposition was not substantially justified, in her suit claiming that employer denied her medical leave in violation of District of Columbia Family and Medical Leave Act (DCFMLA), discriminated against her when she became pregnant, and failed to accommodate her panic anxiety syndrome under District of Columbia Human Rights Act (DCHRA), and thus, sanction was warranted entitling employer to award of reasonable expenses, including attorney fees and costs related to motion to compel discovery. Jackson v. CCA of Tenn., Inc., 254 F.R.D. 135, 2008 U.S. Dist. LEXIS 97063 (2008).

Former employee's medical and work history information requested at her deposition was not privileged, warranting discovery of such information in employee's suit claiming that employer denied employee medical leave in violation of District of Columbia Family and Medical Leave Act (DCFMLA), discriminated against her when she became pregnant, and failed to accommodate her panic anxiety syndrome under District of Columbia Human Rights Act (DCHRA), since employer's inquiries relating to employee's medical and work history were not harassment, but rather, were relevant both to claims and defense. Jackson v. CCA of Tenn., Inc., 254 F.R.D. 135, 2008 U.S. Dist. LEXIS 97063 (2008).

In general.

Employee worked at least 1,000 hours in calendar year and was active employee on last day of year, notwithstanding that she was on covered sick leave under Family and Medical Leave Act (FMLA) and related District of Columbia law (DCFMLA) at end of year, and thus, she was eligible for contributions to employer's ERISA Profit Sharing Plan; employer did not consider her a non-employee, as it carefully

attempted to get employee to "resign" in February of following year, and fact that insurance company decided that employee's disability benefits could commence in mid-December of year in question did not change her protected status under FMLA/DCFMLA. Dorsey v. Jacobson Holman, PLLC, 756 F.Supp.2d 30, 2010 U.S. Dist. LEXIS 134716 (2010).

Sixteen-week protected period under Family and Medical Leave Act (FMLA) includes both paid and unpaid sick leave and is absolute maximum time that employee may be away from work on medical leave. D.C. Code 1981, § 36-1303(a), (b)(2). Harrison v. Children's Nat'l Medical Ctr., 678 A.2d 572, 1996 D.C. App. LEXIS 128 (1996).

Jurisdiction.

Limited contacts that non-resident company executives had with District of Columbia were not "separate from and in addition to" employee's allegedly unlawful termination, and thus tortious injury subsection of District of Columbia long-arm statute did not authorize personal jurisdiction over executives in former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Contacts of non-resident company executives with District of Columbia were in the course of employment, rather than based on personal contacts, and thus subsection of District of Columbia long-arm statute allowing personal jurisdiction over person transacting business in District did not authorize personal jurisdiction over executives in female former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Non-resident company executives did not have continuous and systematic contacts with District of Columbia, as required for federal district court to have general jurisdiction over two executives in their personal capacities in female former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act; during relevant time period, both executives lived and worked in Texas, neither regularly did business with District of Columbia, and they did not solicit business within the District. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Limitation of actions.

Employee's cause of action for retaliation for protected conduct under District of Columbia Family and Medical Leave Act (DCFMLA) accrued, and one-year limitations period began to run, when employee was removed from payroll upon taking DCFMLA leave and was threatened with regard to her job security due to her DCFMLA leave. Cesarano v. Reed Smith LLP, 990 A.2d 455, 2010 D.C. App. LEXIS 87 (2010).

Morning sickness.

To qualify for leave under federal Family and Medical Leave Act (FMLA), employee was not required to provide evidence from health care provider that she suffered from severe morning sickness or that she had a serious health condition and that she was unable to perform functions of her job; absent request by employer to provide medical certification of morning sickness or doctor's opinion that she was unable to perform her duties, employee was not required to seek out medical treatment. Family and Medical Leave Act of 1993,§ 103, 29 U.S.C. § 2613; D.C. Code 1981, § 36-1301 et seq.; 29 C.F.R. §§ 825.114(e), 825.115, 825.305. Pendarvis v. Xerox Corp., 3 F.Supp.2d 53, 1998 U.S. Dist. LEXIS 6481 (1998).

Material issues of fact as to whether employee's morning sickness was so severe that she was unable to perform her duties, whether she gave employer reasonable notice of need for leave and reasons for absences, and whether those absences were excluded or should have been, precluded summary judgment for employer in employee's suit under federal Family and Medical Leave Act (FMLA). Family and Medical Leave Act of 1993, § 2 et seq., 29 U.S.C. § 2601 et seq.; D.C. Code 1981, § 36-1301 et seq. Pendarvis v. Xerox Corp., 3 F.Supp.2d 53, 1998 U.S. Dist. LEXIS 6481 (1998).

To qualify for leave under federal Family and Medical Leave Act (FMLA) in cases of pregnancy-related severe morning sickness, employee is not required to provide medical evidence to establish that she is unable to perform function of her job because of severe morning sickness. Family and Medical Leave Act of 1993, § 103, 29 U.S.C. § 2613; D.C. Code 1981, § 36-1301 et seq.; 29 C.F.R. §§ 825.114(e), 825.115, 825.305. Pendarvis v. Xerox Corp., 3 F.Supp.2d 53, 1998 U.S. Dist. LEXIS 6481 (1998).

Payment and source of payment during leave.

The Family and Medical Leave Act (FMLA) sets up a protected period of only 16 weeks which the employee can choose to take as either

paid or unpaid; in no event is the FMLA's protected period longer than 16 weeks. Harrison v. Children's Nat'l Medical Ctr., 121 WLR 405 (Super. Ct. 1993).

Subsection (b)(2) indicates that should an employee elect to use accumulated paid sick leave during her 16-week Family and Medical Leave Act (FMLA) medical leave, she will not be entitled to "tacking on," because the paid leave also counts against the 16-week FMLA leave. Harrison v. Children's Nat'l Medical Ctr., 121 WLR 405 (Super. Ct. 1993).

Questions of fact.

Genuine issues of material fact, as to how much family medical leave District of Columbia employee took in year she was discharged, whether she was taking federally protected leave on date of her removal, and whether employer retaliated against her for taking protected leave, precluded summary judgment for District of Columbia on terminated employee's claims under federal and District FMLAs. Tabb v. District of Columbia, 605 F.Supp.2d 89, 2009 U.S. Dist. LEXIS 22057 (2009), modified by 2010 U.S. Dist. LEXIS 60373 (D.D.C. June 16, 2010).

Reduction in force.

Employer's elimination of employee's position pursuant to reduction in force (RIF) while she was on medical leave did not violate Family Medical Leave Act (FMLA) and District of Columbia Family Medical Leave Act (DCFMLA). Price v. Wash. Hosp. Ctr., 321 F.Supp.2d 38, 2004 U.S. Dist. LEXIS 9834 (2004).

§ 32-504. Certification.

(a) An employer may require that a request for family leave under § 32-502(a)(4) of medical leave under § 32-503 be supported by a certification issued by the health care provider of the employee or family member. The employee shall provide a copy of the certification to the employer.

(b) The certification provided by the employee to the employer shall state:

(1) The date on which the serious health condition commenced;

(2) The probable duration of the condition;

(3) The appropriate medical facts within the knowledge of the health care provider that would entitle the employee to take leave under this chapter; and

(4)(A) For purposes of medical leave under § 32-503, a statement that the employee is unable to perform the functions of the employee's position; or

(B) For purposes of family leave under § 32-502(a)(4), an estimate of the amount of time that the employee is needed to care for the family member.

(c) For the purposes of § 32-505(c), the employer may request that certification issued in any case involving medical leave under § 32-503 include an explanation of the extent to which the employee is unable to perform the functions of the employee's position.

(d)(1) If the employer has reason to doubt the validity of the certification provided under subsection (a) of this section, the employer may require that the employee obtain, at the expense of the employer, the opinion of a 2nd health care provider approved by the employer, in regard to any information required to be certified under subsection (b) of this section.

(2)(A) If the 2nd opinion provided under this subsection differs from the original certification provided under subsection (a) of this section, the employee may obtain the opinion of a 3rd health care provider mutually agreed upon by the employer and the employee, in regard to any information required to be certified under subsection (b) of this section. The employer shall pay the cost of the opinion of the 3rd health care provider.

(B) The opinion of the 3rd health care provider in regard to the information certified under subsection (b) of this section shall be final and binding on the employer and employee.

(e) Any health care provider approved or mutually agreed upon under subsection (d)(1) or (2) of this section may not be retained on a regular basis by the employer or employee or otherwise bear a close relationship to the employer or employee that would give the appearance that the certification is biased.

(f) The employer may require that the employee obtain subsequent recertifications on a reasonable basis.

(g)(1) Certification information requested under this section shall be used only to make a decision in regard to the provisions of this chapter. An employer shall keep any medical information obtained from a certification request confidential.

(2) Any employer who willfully violates this subsection shall be assessed a civil penalty of $1,000 for each offense.

(Oct. 3, 1990, D.C. Law 8-181, § 5, 37 DCR 5043.)

Section references. — This section is referred to in § 32-503.

Prior Codifications. — 1981 Ed., § 36-1304.

Legislative history of Law 8-181. — For legislative history of D.C. Law 8-181, see Historical and Statutory Notes following § 32-501.

CASE NOTES

Relief from judgment.

Employee's own lack of due diligence, rather than extraordinary circumstances, was cause of delay in submission of medical certificates outlining employee's need for medical leave from employment in action against school district alleging violation of Family and Medical Leave Act (FMLA) and District of Columbia Family and Medical Leave Act (DCFMLA), and thus relief from judgment in favor of school district under catch-all provision of governing rule was not warranted. Lightfoot v. District of Columbia, 555 F.Supp.2d 61, 2008 U.S. Dist. LEXIS 39541 (2008), affirmed by 2008 U.S. App. LEXIS 22922 (D.C. Cir. Nov. 5, 2008).

Additional medical certificates regarding disability submitted with employee's motion for relief from judgment in action against school district alleging violation of Family and Medical Leave Act (FMLA) and District of Columbia Family and Medical Leave Act (DCFMLA) were not "newly discovered evidence" that could not have been discovered through reasonable diligence during pendency of litigation, as required for relief from judgment in favor of school district, although medical certificates were not cumulative or merely relevant for impeachment; plaintiff was aware of existence of medical certificates and was in possession of at least one throughout litigation, plaintiff failed to explain why evidence was not timely presented, and plaintiff did not exercise due diligence. Lightfoot v. District of Columbia, 555 F.Supp.2d 61, 2008 U.S. Dist. LEXIS 39541 (2008), affirmed by 2008 U.S. App. LEXIS 22922 (D.C. Cir. Nov. 5, 2008).

§ 32-505. Employment and benefits protection.

(a) Any employee who takes family or medical leave under this chapter shall not lose any employment benefit or seniority accrued before the date on which the family or medical leave commenced.

(b)(1) During any period in which an employee takes family or medical leave under § 32-502 or § 32-503, the employer shall maintain coverage under any group health plan, as defined in section 5000(b) of the Internal Revenue Code of 1986, approved October 21, 1986 (100 Stat. 2012; 26 U.S.C. 5000(b)), except that for the purposes of this chapter, the term "group health plan" shall include a group health plan provided by the District of Columbia government. The employer shall maintain coverage for the duration of the family or medical

leave at the same level and under the same conditions that coverage would have been provided if the employee had continued in employment from the date the employee commenced the family or medical leave until the date the employee was restored to employment pursuant to subsection (d) of this section.

(2) An employer may require the employee to continue to make any contribution to a group health plan that the employee would have made if the employee had not taken family or medical leave. If an employee is unable or refuses to make the contribution to the group health plan, the employee shall forfeit the health plan benefit until the employee is restored to employment pursuant to subsection (d) of this section and resumes payment to the plan.

(c)(1) Nothing in this chapter shall prohibit an employer and an employee with a serious health condition from agreeing mutually to alternative employment for the employee throughout the duration of the serious health condition of the employee. Any period of alternative employment shall not cause a reduction in the amount of family or medical leave to which the employee is entitled under § 32-502 or § 32-503.

(2) When the employee who agreed to alternative employment is able to perform the functions of the employee's original position, the employee shall be restored to the original position pursuant to subsection (d) of this section.

(d) Except as provided in subsection (f) of this section, upon return from family or medical leave taken pursuant to § 32-502 or § 32-503, the employee shall be:

(1) Restored by the employer to the position of employment held by the employee when the family or medical leave commenced; or

(2) Restored to a position of employment equivalent to the position held by the employee when the family or medical leave commenced that includes equivalent employment benefits, pay, seniority, and other terms and conditions of employment.

(e) Except as provided in subsection (b) of this section, nothing in this section shall entitle an employee restored by an employer to a position of employment to:

(1) The accrual of any seniority or employment benefit during any period of family or medical leave; or

(2) Any right, employment benefit, or position of employment other than any right, employment benefit, or position of employment to which the employee would have been entitled had the employee not taken the family or medical leave.

(f)(1) Except as provided in paragraph (2) of this subsection, an employer in the District may deny restoration of employment to a salaried employee if the employee is among the 5 highest paid employees of an employer of fewer than 50 persons or among the highest paid 10% of employees of an employer of 50 or more persons and the following conditions are met:

(A) The employer demonstrates that denial of restoration of employment is necessary to prevent substantial economic injury to the employer's operations and the injury is not directly related to the leave that the employee took pursuant to this chapter; and

(B) The employer notifies the employee of the intent to deny restoration of employment and the basis for the decision at the time the employer determines denial of restoration of employment is necessary.

(2) The condition in paragraph (1)(A) of this subsection shall not apply if the following conditions have been met:

(A) The employer is under a contract to provide work or services and the absence of the employee prohibits the employer from completing the contract in accordance with the terms of the contract;

(B) Failure to complete the contract will cause substantial economic injury to the employer; and

(C) After the employer made reasonable attempts, the employer failed to find a temporary replacement for the employee.

(Oct. 3, 1990, D.C. Law 8-181, § 6, 37 DCR 5043.)

Section references. — This section is referred to in §§ 32-504 and 32-506.

Prior Codifications. — 1981 Ed., § 36-1305.

Legislative history of Law 8-181. — For legislative history of D.C. Law 8-181, see Historical and Statutory Notes following § 32-501.

CASE NOTES

ANALYSIS

Construction with federal law.
Discovery.
Equivalent position.
In general.
Jurisdiction.
Presumptions and burden of proof.

Construction with federal law.

Both the District of Columbia Family and Medical Leave Act (DCFMLA) and the FMLA use the term "equivalent position" in the identical context of defining the employee's reinstatement rights, and thus, although the federal authorities are not binding on District of Columbia appellate court, appellate court could may properly look to FMLA regulations and case law as persuasive authority in interpreting District of Columbia statute. Wash. Convention Ctr. Auth. v. Johnson, 953 A.2d 1064, 2008 D.C. App. LEXIS 357 (2008).

Discovery.

Former employee's uncooperativeness during her deposition was not substantially justified, in her suit claiming that employer denied her medical leave in violation of District of Columbia Family and Medical Leave Act (DCFMLA), discriminated against her when she became pregnant, and failed to accommodate her panic anxiety syndrome under District of Columbia Human Rights Act (DCHRA), and thus, sanction was warranted entitling employer to award of reasonable expenses, including attorney fees and costs related to motion to compel discovery. Jackson v. CCA of Tenn., Inc., 254 F.R.D. 135, 2008 U.S. Dist. LEXIS 97063 (2008).

Former employee's medical and work history information requested at her deposition was not privileged, warranting discovery of such information in employee's suit claiming that employer denied employee medical leave in violation of District of Columbia Family and Medical Leave Act (DCFMLA), discriminated against her when she became pregnant, and failed to accommodate her panic anxiety syndrome under District of Columbia Human Rights Act (DCHRA), since employer's inquiries relating to employee's medical and work history were not harassment, but rather, were relevant both to claims and defense. Jackson v. CCA of Tenn., Inc., 254 F.R.D. 135, 2008 U.S. Dist. LEXIS 97063 (2008).

Equivalent position.

Both the District of Columbia Family and Medical Leave Act (DCFMLA) and the FMLA use the term "equivalent position" in the identical context of defining the employee's reinstatement rights, and thus, although the federal authorities are not binding on District of Columbia appellate court, appellate court could may properly look to FMLA regulations and case law as persuasive authority in interpreting District of Columbia statute. Wash. Convention Ctr. Auth. v. Johnson, 953 A.2d 1064, 2008 D.C. App. LEXIS 357 (2008).

Under District of Columbia Family and Medical Leave Act (DCFMLA), an employee returning from medical leave will be restored to the same position which that employee held when

the leave began, or to an equivalent position, and "equivalent position" provision under DCFMLA recognizes the dynamic needs of employers and permits them to restore employees to positions other than the exact one they left. Wash. Convention Ctr. Auth. v. Johnson, 953 A.2d 1064, 2008 D.C. App. LEXIS 357 (2008).

In general.

District of Columbia Family and Medical Leave Act (DCFMLA) does not create an absolute right to reinstatement. Wash. Convention Ctr. Auth. v. Johnson, 953 A.2d 1064, 2008 D.C. App. LEXIS 357 (2008).

Sixteen-week protected period under Family and Medical Leave Act (FMLA) includes both paid and unpaid sick leave and is absolute maximum time that employee may be away from work on medical leave. D.C. Code 1981, § 36-1303(a), (b)(2). Harrison v. Children's Nat'l Medical Ctr., 678 A.2d 572, 1996 D.C. App. LEXIS 128 (1996).

This section protects an employee's status once she returns within the protected period, and ensures that employees do not lose benefits or accrued seniority during the protected period. Harrison v. Children's Nat'l Medical Ctr., 121 WLR 405 (Super. Ct. 1993) In accord with the first paragraph in the 1996 supplement. Harrison v. Children's Nat'l Medical Ctr., 678 A.2d 572, 1996 D.C. App. LEXIS 128 (1996).

Jurisdiction.

Limited contacts that non-resident company executives had with District of Columbia were not "separate from and in addition to" employee's allegedly unlawful termination, and thus tortious injury subsection of District of Columbia long-arm statute did not authorize personal jurisdiction over executives in former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Contacts of non-resident company executives with District of Columbia were in the course of employment, rather than based on personal contacts, and thus subsection of District of Columbia long-arm statute allowing personal jurisdiction over person transacting business in District did not authorize personal jurisdiction over executives in female former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Non-resident company executives did not have continuous and systematic contacts with District of Columbia, as required for federal district court to have general jurisdiction over two executives in their personal capacities in female former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act; during relevant time period, both executives lived and worked in Texas, neither regularly did business with District of Columbia, and they did not solicit business within the District. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Presumptions and burden of proof.

For employer lawfully to deny employee's restoration rights under District of Columbia Family and Medical Leave Act (DCFMLA), employer had to show that the termination for other reasons would have been lawful, and since employee's termination was unlawful, in that it was based on age discrimination, appellate court could not conclude that the same, unlawful, termination established a defense to the employee's DCFMLA claim. Wash. Convention Ctr. Auth. v. Johnson, 953 A.2d 1064, 2008 D.C. App. LEXIS 357 (2008).

§ 32-506. School employees.

(a) If the conditions in subsection (b) of this section are met, a local educational agency ("educational agency") or private elementary or secondary school ("school") may require an employee who is employed principally in an instructional capacity to elect to:

(1) Take the family or medical leave for periods of particular duration not to exceed the planned medical treatment or supervision; or

(2) Transfer temporarily to an available alternative position offered by the educational agency or school for which the employee is qualified, which has equivalent pay and benefits, and better accommodates the recurring periods of leave than the employee's regular employment position.

(b) The provisions of subsection (a) of this section shall apply if the employee described in subsection (a) of this section:

(1) Elects to take family leave pursuant to § 32-502(a)(4) or medical leave pursuant to § 32-503 that is foreseeable based on planned medical treatment or supervision;

(2) Would be on leave for greater than 20% of the total number of working days in the period during which leave would extend; and

(3) Complies with § 32-502(g) or § 32-503(c).

(c)(1) If an employee of an educational agency or school who is employed principally in an instructional capacity begins family or medical leave more than 5 weeks before the end of the academic term, the educational agency or school may require the employee to continue to take leave until the end of the term if:

(A) The leave is at least 3 weeks in duration; and

(B) The return to employment would occur during the 3-week period before the end of the academic term.

(2) If the employee described in paragraph (1) of this subsection begins leave under § 32-502 or § 32-503 during the period that commences from more than 3 weeks and up to and including 5 weeks before the end of the academic term, the educational agency or school may require the employee to continue to take leave until the end of the term if:

(A) The leave is greater than 2 weeks in duration; and

(B) The return to employment would occur during the 2-week period before the end of the academic term.

(3) If the employee described in paragraph (1) of this subsection begins leave under § 32-502 or § 32-503 during the period that commences 3 weeks or less before the end of the academic term and the duration of the leave is greater than 5 working days, the educational agency or school may require the employee to continue to take leave until the end of the term.

(d) For purposes of a restoration of employment determination under § 32-505(d)(2), in the case of an educational agency or school, the determination shall be made on the basis of established school board or private school policies and practices and collective bargaining agreements.

(Oct. 3, 1990, D.C. Law 8-181, § 7, 37 DCR 5043.)

Prior Codifications. — 1981 Ed., § 36-1306.

Legislative history of Law 8-181. — For legislative history of D.C. Law 8-181, see Historical and Statutory Notes following § 32-501.

§ 32-507. Prohibited acts.

(a) It shall be unlawful for any person to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by this chapter.

(b) It shall be unlawful for an employer to discharge or discriminate in any manner against any person because the person:

(1) Opposes any practice made unlawful by this chapter;

(2) Pursuant or related to this chapter:

(A) Files or attempts to file a charge;

(B) Institutes or attempts to institute a proceeding; or

(C) Facilitates the institution of a proceeding; or

(3) Gives any information or testimony in connection with an inquiry or proceeding related to this chapter.

(Oct. 3, 1990, D.C. Law 8-181, § 8, 37 DCR 5043.)

Prior Codifications. — 1981 Ed., § 36-1307.

Legislative history of Law 8-181. — For legislative history of D.C. Law 8-181, see Historical and Statutory Notes following § 32-501.

CASE NOTES

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Causation.

Close temporal proximity between protected activity and an adverse employment action may, standing alone, be sufficient for a reasonable jury to infer causation in an action alleging violations of District of Columbia and the federal Family and Medical Leave Acts. Winder v. Erste, 511 F.Supp.2d 160, 2007 U.S. Dist. LEXIS 72655 (2007), affirmed in part and reversed in part by, remanded by 566 F.3d 209, 386 U.S. App. D.C. 26, 2009 U.S. App. LEXIS 10296, 92 Empl. Prac. Dec. (CCH) P43562, 29 I.E.R. Cas. (BNA) 143 (2009).

Construction with federal law.

Employer's decision to terminate employee in reduction in force was not pretext for retaliation for employee's use of medical leave, in violation of Family and Medical Leave Act (FMLA) and District of Columbia Family and Medical Leave Act (DCFMLA), even though employer failed to provide objective or measurable criteria on how it ranked employees, where employer was under severe financial strain, employee's supervisor had ranked her performance below that of co-worker who was retained, and there was no indication that supervisor displayed any animus toward employee. Cobbs v. Bluemercury, Inc., 746 F.Supp.2d 137, 2010 U.S. Dist. LEXIS 114256 (2010).

Employer did not unlawfully interfere with employee's ability to take leave under Family and Medical Leave Act (FMLA) and District of Columbia Family and Medical Leave Act (DCFMLA) after she was in motor vehicle accident, where employee did not allege that her injuries required hospitalization or rendered her unable to work, her physician permitted her to return to work if she wore neck brace and kept her arm in sling, employer permitted her to wear brace and sling at work, and employee failed to show any prejudice from lost or diminished wages, additional medical expenses, or consequential damages. Cobbs v. Bluemercury, Inc., 746 F.Supp.2d 137, 2010 U.S. Dist. LEXIS 114256 (2010).

Both the District of Columbia and the federal Family and Medical Leave Acts make it unlawful for a covered employer to discriminate against employees for exercising rights protected under the Acts' respective provisions. Winder v. Erste, 511 F.Supp.2d 160, 2007 U.S. Dist. LEXIS 72655 (2007), affirmed in part and reversed in part by, remanded by 566 F.3d 209, 386 U.S. App. D.C. 26, 2009 U.S. App. LEXIS 10296, 92 Empl. Prac. Dec. (CCH) P43562, 29 I.E.R. Cas. (BNA) 143 (2009).

Like its federal counterpart, the District of Columbia Family and Medical Leave Act (DCFMLA) recognizes two theories for recovery-the retaliation or discrimination theory and the entitlement or interference theory. Wash. Convention Ctr. Auth. v. Johnson, 953 A.2d 1064, 2008 D.C. App. LEXIS 357 (2008).

Discovery.

Former employee's uncooperativeness during her deposition was not substantially justified, in her suit claiming that employer denied her medical leave in violation of District of Columbia Family and Medical Leave Act (DCFMLA), discriminated against her when she became pregnant, and failed to accommodate her panic anxiety syndrome under District of Columbia Human Rights Act (DCHRA), and thus, sanction was warranted entitling employer to award of reasonable expenses, including attorney fees and costs related to motion to compel discovery. Jackson v. CCA of Tenn., Inc., 254 F.R.D. 135, 2008 U.S. Dist. LEXIS 97063 (2008).

Former employee's medical and work history information requested at her deposition was

not privileged, warranting discovery of such information in employee's suit claiming that employer denied employee medical leave in violation of District of Columbia Family and Medical Leave Act (DCFMLA), discriminated against her when she became pregnant, and failed to accommodate her panic anxiety syndrome under District of Columbia Human Rights Act (DCHRA), since employer's inquiries relating to employee's medical and work history were not harassment, but rather, were relevant both to claims and defense. Jackson v. CCA of Tenn., Inc., 254 F.R.D. 135, 2008 U.S. Dist. LEXIS 97063 (2008).

In general.

District of Columbia Family and Medical Leave Act (DCFMLA) does not immunize an employee from legitimate disciplinary action by her employer for reasons unrelated to the employee's protected leave. Teru Chang v. Inst. for Public-Private P'ships, Inc., 846 A.2d 318, 2004 D.C. App. LEXIS 161 (2004).

Jurisdiction.

Limited contacts that non-resident company executives had with District of Columbia were not "separate from and in addition to" employee's allegedly unlawful termination, and thus tortious injury subsection of District of Columbia long-arm statute did not authorize personal jurisdiction over executives in former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Contacts of non-resident company executives with District of Columbia were in the course of employment, rather than based on personal contacts, and thus subsection of District of Columbia long-arm statute allowing personal jurisdiction over person transacting business in District did not authorize personal jurisdiction over executives in female former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Non-resident company executives did not have continuous and systematic contacts with District of Columbia, as required for federal district court to have general jurisdiction over two executives in their personal capacities in female former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act; during relevant time period, both executives lived and worked in Texas, neither regularly did business with District of Columbia, and they did not solicit business within the District. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Presumptions and burden of proof.

Assuming that the employer has met its burden of producing a nondiscriminatory reason for its actions, in action under the District of Columbia and the federal Family and Medical Leave Acts, the focus of proceedings at trial and at summary judgment will be on whether the jury could infer discrimination from the combination of: (1) the plaintiff's prima facie case; (2) any evidence the plaintiff presents to attack the employer's proffered explanation for its actions; and (3) any further evidence of discrimination that may be available to the plaintiff, such as independent evidence of discriminatory statements or attitudes on the part of the employer, or any contrary evidence that may be available to the employer, such as evidence of a strong track record in equal opportunity employment. Winder v. Erste, 511 F.Supp.2d 160, 2007 U.S. Dist. LEXIS 72655 (2007), affirmed in part and reversed in part by, remanded by 566 F.3d 209, 386 U.S. App. D.C. 26, 2009 U.S. App. LEXIS 10296, 92 Empl. Prac. Dec. (CCH) P43562, 29 I.E.R. Cas. (BNA) 143 (2009).

Pretext.

Although close temporal proximity between employee's leave and leave request and his termination alone may be sufficient for a reasonable jury to infer causation under FMLA and District of Columbia Family and Medical Leave Act (DCFMLA) once employer proffers legitimate non-Acts-violating reason for employee's termination, employee cannot rely on temporal proximity alone to establish pretext and must point to additional evidence. Butler v. D.C. Hous. Fin. Agency, 593 F.Supp.2d 61, 2009 U.S. Dist. LEXIS 22856 (2009).

Issues with former employee's management of District of Columbia Public Schools (DCPS) transportation system, including disagreements with superiors on significant staffing issues and transportation priorities, were not pretext for discrimination against employee for using sick leave, in violation of District of Columbia and the federal Family and Medical Leave Acts, even if they were possibly a pretext for retaliating against employee for publicly criticizing DCPS and his superiors. Winder v. Erste, 511 F.Supp.2d 160, 2007 U.S. Dist. LEXIS 72655 (2007), affirmed in part and reversed in part by, remanded by 566 F.3d 209, 386 U.S. App. D.C. 26, 2009 U.S. App. LEXIS

10296, 92 Empl. Prac. Dec. (CCH) P43562, 29 I.E.R. Cas. (BNA) 143 (2009).

Prima facie case.

To establish prima facie case under Family and Medical Leave Act (FMLA) and District of Columbia Family and Medical Leave Act (DCFMLA), District of Columbia Housing Finance Agency (DCHFA) employee had to show (a) he was engaged in a protected activity, (b) he suffered an adverse employment action, and (c) protected activity and adverse employment action were causally connected. Butler v. D.C. Hous. Fin. Agency, 593 F.Supp.2d 61, 2009 U.S. Dist. LEXIS 22856 (2009).

Under McDonnell Douglas framework, District of Columbia Housing Finance Agency (DCHFA) employee who was suing under Family and Medical Leave Act (FMLA) and District of Columbia Family and Medical Leave Act (DCFMLA) first had to establish prima facie case that DCHFA terminated him in violation of the Acts; burden then would shift to DCHFA to articulate legitimate, non-Acts-violating reason for his termination, and if DCHFA met its burden, then employee would have burden to produce substantial evidence that DCHFA's proffered reason was merely a pretext for terminating him because he exercised his rights under the Acts. Butler v. D.C. Hous. Fin. Agency, 593 F.Supp.2d 61, 2009 U.S. Dist. LEXIS 22856 (2009).

Fact that employee went out on sick leave for a two-week period and was terminated while he was on leave was sufficient to establish a prima facie case of discrimination for taking sick leave, in violation of the District of Columbia and the federal Family and Medical Leave Acts. Winder v. Erste, 511 F.Supp.2d 160, 2007 U.S. Dist. LEXIS 72655 (2007), affirmed in part and reversed in part by, remanded by 566 F.3d 209, 386 U.S. App. D.C. 26, 2009 U.S. App. LEXIS 10296, 92 Empl. Prac. Dec. (CCH) P43562, 29 I.E.R. Cas. (BNA) 143 (2009).

The elements of a prima facie case are the same under both the District of Columbia and the federal Family and Medical Leave Acts: (1) plaintiff engaged in a protected activity under the Acts; (2) he was affected by an adverse employment action; and (3) the protected activity and the adverse employment action were causally connected. Winder v. Erste, 511 F.Supp.2d 160, 2007 U.S. Dist. LEXIS 72655 (2007), affirmed in part and reversed in part by, remanded by 566 F.3d 209, 386 U.S. App. D.C. 26, 2009 U.S. App. LEXIS 10296, 92 Empl. Prac. Dec. (CCH) P43562, 29 I.E.R. Cas. (BNA) 143 (2009).

For employer lawfully to deny employee's restoration rights under District of Columbia Family and Medical Leave Act (DCFMLA), employer had to show that the termination for other reasons would have been lawful, and since employee's termination was unlawful, in that it was based on age discrimination, appellate court could not conclude that the same, unlawful, termination established a defense to the employee's DCFMLA claim. Wash. Convention Ctr. Auth. v. Johnson, 953 A.2d 1064, 2008 D.C. App. LEXIS 357 (2008).

Reinstatement.

District of Columbia Family and Medical Leave Act (DCFMLA) does not create an absolute right to reinstatement. Wash. Convention Ctr. Auth. v. Johnson, 953 A.2d 1064, 2008 D.C. App. LEXIS 357 (2008).

Retaliatory termination.

Employee stated sufficient claim for retaliation under District of Columbia Family and Medical Leave Act (DCFMLA) by alleging that she was "terminated. .. in whole or in part for exercising her right to medical leave." Teru Chang v. Inst. for Public-Private P'ships, Inc., 846 A.2d 318, 2004 D.C. App. LEXIS 161 (2004).

District of Columbia Family and Medical Leave Act (DCFMLA) permits a cause of action for termination in retaliation for taking protected leave. Teru Chang v. Inst. for Public-Private P'ships, Inc., 846 A.2d 318, 2004 D.C. App. LEXIS 161 (2004).

To establish a prima facie case of retaliatory termination under the District of Columbia Family and Medical Leave Act (DCFMLA), a plaintiff must demonstrate that: (1) she was engaged in a protected activity; (2) her employer took an adverse employment action; and (3) there was a causal connection between the two. Teru Chang v. Inst. for Public-Private P'ships, Inc., 846 A.2d 318, 2004 D.C. App. LEXIS 161 (2004).

Employee established prima facie case of retaliation in violation of District of Columbia Family and Medical Leave Act (DCFMLA) by presenting evidence that she took protected medical leave and was fired on day she was to have returned to work. Teru Chang v. Inst. for Public-Private P'ships, Inc., 846 A.2d 318, 2004 D.C. App. LEXIS 161 (2004).

After employee established prima facie case of retaliation in violation of District of Columbia Family and Medical Leave Act (DCFMLA), employer met its burden to articulate legitimate, non-discriminatory reason for termination by presenting ample evidence that it was dissatisfied with employee's behavior at work and was actively contemplating her termination well before she ever took protected leave. Teru Chang v. Inst. for Public-Private P'ships, Inc., 846 A.2d 318, 2004 D.C. App. LEXIS 161 (2004).

Employee failed to meet her burden under District of Columbia Family and Medical Leave Act (DCFMLA) to show that employer's stated

reason for firing her after she took medical leave was pretextual; evidence showed that employer had some underlying concerns about employee's ability to get along with other staff members prior to employee's medical leave, and employee admitted that she had wilfully disobeyed her supervisor's request not to yell at co-workers. Teru Chang v. Inst. for Public-Private P'ships, Inc., 846 A.2d 318, 2004 D.C. App. LEXIS 161 (2004).

Summary judgment.

Genuine issues of material fact as to, inter alia whether decisionmaker had notice of employee's protected leave and whether termination decision was motivated by employee's unsatisfactory performance or by fact he took or requested protected leave, precluded summary judgment on employee's claims under Family and Medical Leave Act (FMLA) and District of Columbia Family and Medical Leave Act (DCFMLA). Butler v. D.C. Hous. Fin. Agency, 593 F.Supp.2d 61, 2009 U.S. Dist. LEXIS 22856 (2009).

§ 32-508. Investigative authority.

(a) An employer shall develop, maintain, and make available to the Mayor records regarding the employer's activities related to this chapter that the Mayor may prescribe by rule.

(b) To ensure compliance with the provisions of this chapter, the Mayor, consistent with constitutional guidelines, may:

(1) Investigate and gather data regarding any wage, hour, condition, or practice of employment related to this chapter; and

(2) Enter or inspect any place of employment or record required by this chapter.

(c) For the purpose of any investigation provided for in this section, the Mayor may exercise the subpoena authority provided in § 1-301.21.

(Oct. 3, 1990, D.C. Law 8-181, § 9, 37 DCR 5043.)

Prior Codifications. — 1981 Ed., § 36-1308.

Legislative history of Law 8-181. — For legislative history of D.C. Law 8-181, see Historical and Statutory Notes following § 32-501.

§ 32-509. Administrative enforcement procedure; relief.

(a) The Mayor shall provide an administrative procedure pursuant to which a person claimed to be aggrieved under this chapter may file a complaint against an employer alleged to have violated this chapter. A complaint shall be filed within 1 year of the occurrence or discovery of the alleged violation of this chapter.

(b) The administrative procedure shall include, but not be limited to:

(1) An investigation of the complaint and an attempt to resolve the complaint by conference, conciliation, or persuasion;

(2) If the complaint is not resolved, a determination on the existence of probable cause to believe a violation of this chapter has occurred;

(3) If there is a determination that probable cause exists, the issuance and service of a written notice and a copy of the complaint to the employer alleged to have committed the violation that requires the employer to answer the charges of the complaint at a formal hearing;

(4) A hearing conducted in accordance with procedures that the Mayor shall promulgate pursuant to subchapter I of Chapter 5 of Title 2;

(5) A decision and order accompanied by findings of fact and conclusions of law;

(6) If there is a determination that an employer committed a violation of this chapter, the issuance of an order that requires the employer to pay the employee damages in an amount equal to:

(A) Any wages, salary, employment benefits, or other compensation denied or lost to the employee due to the violation plus interest on the amount calculated at the rate prescribed in § 28-3302(b) or (c); and

(B) An amount equal to the greater of:

(i) The amount determined under subparagraph (A) of this paragraph; or

(ii) Consequential damages not to exceed an amount equal to 3 times the amount determined under subparagraph (A) of this paragraph plus any medical expenses not covered by the health insurance of the employee; or

(C) A reduction in damages, within the discretion of the trier of fact, for an employer who violates this chapter and proves that the violation occurred in good faith and that the employer had reasonable grounds to believe that the employer's action or omission was not in violation of this chapter; and

(7) A provision that authorizes the award of costs and reasonable attorney's fees to the prevailing party in addition to other relief awarded under this chapter.

(c) Any person who is adversely affected or aggrieved by an order or decision issued pursuant to subsection (b) of this section is entitled to judicial review of the order or decision in accordance with § 2-510, upon filing a written petition for review in the District of Columbia Court of Appeals.

(d)(1) If the Mayor determines that the employer has not complied with an order after 20 days following service of the order, the Mayor shall certify the matter to the Corporation Counsel and to any other agency as may be appropriate for enforcement.

(2) The Corporation Counsel shall institute, in the name of the District, a civil proceeding that may include seeking injunctive relief, as is necessary to obtain complete compliance with the order.

(3) An enforcement action shall not be instituted pending judicial review as provided in subsection (c) of this section.

(e) The entire administrative enforcement procedure outlined in subsections (a) and (b) of this section, including the formal hearing, shall take no longer than 150 days to complete from the date the complaint is filed. If the Mayor fails to make a reasonable effort to comply with the deadline requirements of the administrative enforcement provisions prescribed by this subsection and the rules promulgated by the Mayor, the person who initiated the administrative enforcement procedure against the employer may file a civil action against the employer pursuant to § 32-510.

(Oct. 3, 1990, D.C. Law 8-181, § 10, 37 DCR 5043.)

Section references. — This section is referred to in § 32-510.

Prior Codifications. — 1981 Ed., § 36-1309.

Legislative history of Law 8-181. — For legislative history of D.C. Law 8-181, see Historical and Statutory Notes following § 32-501.

CASE NOTES

ANALYSIS

Discovery.
In general.
Jurisdiction.

Discovery.

Former employee's uncooperativeness during her deposition was not substantially justified, in her suit claiming that employer denied her medical leave in violation of District of Columbia Family and Medical Leave Act (DCFMLA), discriminated against her when she became pregnant, and failed to accommodate her panic anxiety syndrome under District of Columbia Human Rights Act (DCHRA), and thus, sanction was warranted entitling employer to award of reasonable expenses, including attorney fees and costs related to motion to compel discovery. Jackson v. CCA of Tenn., Inc., 254 F.R.D. 135, 2008 U.S. Dist. LEXIS 97063 (2008).

Former employee's medical and work history information requested at her deposition was not privileged, warranting discovery of such information in employee's suit claiming that employer denied employee medical leave in violation of District of Columbia Family and Medical Leave Act (DCFMLA), discriminated against her when she became pregnant, and failed to accommodate her panic anxiety syndrome under District of Columbia Human Rights Act (DCHRA), since employer's inquiries relating to employee's medical and work history were not harassment, but rather, were relevant both to claims and defense. Jackson v. CCA of Tenn., Inc., 254 F.R.D. 135, 2008 U.S. Dist. LEXIS 97063 (2008).

In general.

Employer did not unlawfully interfere with employee's ability to take leave under Family and Medical Leave Act (FMLA) and District of Columbia Family and Medical Leave Act (DCFMLA) after she was in motor vehicle accident, where employee did not allege that her injuries required hospitalization or rendered her unable to work, her physician permitted her to return to work if she wore neck brace and kept her arm in sling, employer permitted her to wear brace and sling at work, and employee failed to show any prejudice from lost or diminished wages, additional medical expenses, or consequential damages. Cobbs v. Bluemercury, Inc., 746 F.Supp.2d 137, 2010 U.S. Dist. LEXIS 114256 (2010).

Under District of Columbia's Family and Medical Leave Act (FMLA), aggrieved party has one year from alleged wrongdoing or its discovery to lodge complaint either in administrative or judicial forum. D.C. Code 1981, §§ 36-1309, 36-1310. Simmons v. District of Columbia, 977 F. Supp. 62, 1997 U.S. Dist. LEXIS 20051 (1997).

District of Columbia's Family and Medical Leave Act (FMLA) does not require exhaustion of administrative remedies prior to filing of civil action in court. D.C. Code 1981, §§ 36-1309, 36-1310. Simmons v. District of Columbia, 977 F. Supp. 62, 1997 U.S. Dist. LEXIS 20051 (1997).

Administrative Procedure Act restricted Court of Appeals' direct review to decisions in "contested cases" and, thus, it lacked jurisdiction to review preliminary determination of the former Department of Human Rights and Minority Business Development that there was no probable cause to believe that employer had violated Family and Medical Leave Act. Small v. District of Columbia Office of Human Rights, 768 A.2d 994, 2001 D.C. App. LEXIS 66 (2001).

Jurisdiction.

Limited contacts that non-resident company executives had with District of Columbia were not "separate from and in addition to" employee's allegedly unlawful termination, and thus tortious injury subsection of District of Columbia long-arm statute did not authorize personal jurisdiction over executives in former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Contacts of non-resident company executives with District of Columbia were in the course of employment, rather than based on personal contacts, and thus subsection of District of Columbia long-arm statute allowing personal jurisdiction over person transacting business in District did not authorize personal jurisdiction over executives in female former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Non-resident company executives did not have continuous and systematic contacts with District of Columbia, as required for federal district court to have general jurisdiction over two executives in their personal capacities in female former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act; during relevant time pe-

riod, both executives lived and worked in Texas, neither regularly did business with District of Columbia, and they did not solicit business within the District. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

§ 32-510. Enforcement by civil action.

(a) Subject to the provisions in subsection (b) of this section, an employee or the Mayor may bring a civil action against any employer to enforce the provisions of this chapter in any court of competent jurisdiction.

(b) No civil action may be commenced more than 1 year after the occurrence or discovery of the alleged violation of this chapter.

(c) If a court determines that an employer violated any provision of this chapter, the damages provision prescribed in § 32-509(b)(6) and § 32-509(b)(7) shall apply.

(Oct. 3, 1990, D.C. Law 8-181, § 11, 37 DCR 5043; July 23, 1994, D.C. Law 10-143, § 2, 41 DCR 3059.)

Section references. — This section is referred to in § 32-509.

Prior Codifications. — 1981 Ed., § 36-1310.

Legislative history of Law 8-181. — For legislative history of D.C. Law 8-181, see Historical and Statutory Notes following § 32-501.

Legislative history of Law 10-143. — Law 10-143, the "District of Columbia Family and Medical Leave Act of 1990 Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-420, which was referred to the Committee on Economic Development with comments from the Committee on the Judiciary. The Bill was adopted on first and second readings on April 12, 1994, and May 3, 1994, respectively. Signed by the Mayor on May 18, 1994, it was assigned Act No. 10-248 and transmitted to both Houses of Congress for its review. D.C. Law 10-143 became effective on July 23, 1994.

CASE NOTES

ANALYSIS

Construction with Labor Management Relations Act.
Discovery.
In general.
Jurisdiction.
Limitation of actions.

Construction with Labor Management Relations Act.

Labor Management Relations Act (LMRA) did not preempt employee's complaint against employers and others alleging intentional infliction of emotional distress, intentional and malicious interference with contractual relationship, tortious interference with prospective economic advantage, and violation of District of Columbia's Family Medical Leave Act (FMLA); such claims were not created by or dependent upon interpretation of collective bargaining agreement, and it was only through asserted defense by employer and others that labor contract was brought into question. Labor Management Relations Act, 1947, § 301(a), 29 U.S.C. § 185(a); D.C. Code 1981, § 36-1301 et seq. Van Allen v. Bell Atlantic-Washington, D.C., 921 F. Supp. 830, 1996 U.S. Dist. LEXIS 4586 (1996).

Discovery.

Former employee's uncooperativeness during her deposition was not substantially justified, in her suit claiming that employer denied her medical leave in violation of District of Columbia Family and Medical Leave Act (DCFMLA), discriminated against her when she became pregnant, and failed to accommodate her panic anxiety syndrome under District of Columbia Human Rights Act (DCHRA), and thus, sanction was warranted entitling employer to award of reasonable expenses, including attorney fees and costs related to motion to compel discovery. Jackson v. CCA of Tenn., Inc., 254 F.R.D. 135, 2008 U.S. Dist. LEXIS 97063 (2008).

Former employee's medical and work history information requested at her deposition was not privileged, warranting discovery of such information in employee's suit claiming that employer denied employee medical leave in violation of District of Columbia Family and Medical Leave Act (DCFMLA), discriminated against her when she became pregnant, and

failed to accommodate her panic anxiety syndrome under District of Columbia Human Rights Act (DCHRA), since employer's inquiries relating to employee's medical and work history were not harassment, but rather, were relevant both to claims and defense. Jackson v. CCA of Tenn., Inc., 254 F.R.D. 135, 2008 U.S. Dist. LEXIS 97063 (2008).

In general.

District of Columbia's Family and Medical Leave Act (FMLA) does not require exhaustion of administrative remedies prior to filing of civil action in court. D.C. Code 1981, §§ 36-1309, 36-1310. Simmons v. District of Columbia, 977 F. Supp. 62, 1997 U.S. Dist. LEXIS 20051 (1997).

Under District of Columbia's Family and Medical Leave Act (FMLA), aggrieved party has one year from alleged wrongdoing or its discovery to lodge complaint either in administrative or judicial forum. D.C. Code 1981, §§ 36-1309, 36-1310. Simmons v. District of Columbia, 977 F. Supp. 62, 1997 U.S. Dist. LEXIS 20051 (1997).

Jurisdiction.

Limited contacts that non-resident company executives had with District of Columbia were not "separate from and in addition to" employee's allegedly unlawful termination, and thus tortious injury subsection of District of Columbia long-arm statute did not authorize personal jurisdiction over executives in former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Contacts of non-resident company executives with District of Columbia were in the course of employment, rather than based on personal contacts, and thus subsection of District of Columbia long-arm statute allowing personal jurisdiction over person transacting business in District did not authorize personal jurisdiction over executives in female former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Non-resident company executives did not have continuous and systematic contacts with District of Columbia, as required for federal district court to have general jurisdiction over two executives in their personal capacities in female former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act; during relevant time period, both executives lived and worked in Texas, neither regularly did business with District of Columbia, and they did not solicit business within the District. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Limitation of actions.

Former employee's claims against employer for violations of District of Columbia Family and Medical Leave Act (DCFLMA) accrued, at latest, when she was suspended, where employee did not ask to be placed on family or medical leave after she was suspended. Walston-Jackson v. CCA of Tenn., Inc., 664 F.Supp.2d 24, 2009 U.S. Dist. LEXIS 96264 (2009).

Former employee's claim against former employer for alleged violation of District of Columbia Family and Medical Leave Act (DCFMLA), which was filed more than one year after termination of former employee's employment, was barred by one-year limitations period. Jackson v. Artis, 565 F.Supp.2d 148, 2008 U.S. Dist. LEXIS 55428 (2008).

That former employee was exhausting her administrative remedies with respect to her other claims against former employer did not toll statute of limitations for her claim under District of Columbia Family and Medical Leave Act (DCFMLA). Jackson v. Artis, 565 F.Supp.2d 148, 2008 U.S. Dist. LEXIS 55428 (2008).

§ 32-511. Notice.

(a) The Mayor shall devise, and an employer shall post and maintain in a conspicuous place, a notice that sets forth excerpts from or summaries of the pertinent provisions of this chapter and information that pertains to the filing of a complaint under this chapter.

(b) Any employer who willfully violates this section shall be assessed a civil penalty not to exceed $100 for each day that employer fails to post the notice.

(Oct. 3, 1990, D.C. Law 8-181, § 12, 37 DCR 5043.)

Prior Codifications. — 1981 Ed., § 36-1311.

Legislative history of Law 8-181. — For legislative history of D.C. Law 8-181, see Historical and Statutory Notes following § 32-501.

§ 32-512. Effect on other laws.

Nothing in this chapter shall supersede any provision of law that provides greater employee family or medical leave rights than the family or medical rights established under this chapter.

(Oct. 3, 1990, D.C. Law 8-181, § 13, 37 DCR 5043.)

Prior Codifications. — 1981 Ed., § 36-1312.

Legislative history of Law 8-181. — For legislative history of D.C. Law 8-181, see Historical and Statutory Notes following § 32-501.

CASE NOTES

Jurisdiction.

Limited contacts that non-resident company executives had with District of Columbia were not "separate from and in addition to" employee's allegedly unlawful termination, and thus tortious injury subsection of District of Columbia long-arm statute did not authorize personal jurisdiction over executives in former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. D'Onofrio v. SFX Sports Group, Inc., 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

§ 32-513. Effect on existing employment benefits.

(a) Nothing in this chapter shall diminish an employer's obligation to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family or medical leave rights to an employee than the family or medical leave rights provided under this chapter.

(b) The rights provided to an employee under this chapter may not be diminished by any collective bargaining agreement or any employment benefit program or plan, except that this chapter shall not supersede any clause on family or medical leave in any collective bargaining agreement in force on October 3, 1990, for the time that the collective bargaining agreement is in effect.

(c) The rights provided to an employee under this chapter may be suspended temporarily for an employee of a public safety agency if the employee is required by rules or regulations of the agency or by the provisions of a collective bargaining agreement to return to duty because of an emergency declared by the agency head or the Mayor.

(Oct. 3, 1990, D.C. Law 8-181, § 14, 37 DCR 5043.)

Prior Codifications. — 1981 Ed., § 36-1313.

Legislative history of Law 8-181. — For legislative history of D.C. Law 8-181, see Historical and Statutory Notes following § 32-501.

§ 32-514. Encouragement of more generous leave policies.

Nothing in this chapter shall be construed to discourage an employer from

the adoption or retention of a family and medical leave policy more generous than the family and medical leave required by this chapter.

(Oct. 3, 1990, D.C. Law 8-181, § 15, 37 DCR 5043.)

Prior Codifications. — 1981 Ed., § 36-1314.

Legislative history of Law 8-181. — For legislative history of D.C. Law 8-181, see Historical and Statutory Notes following § 32-501.

CASE NOTES

In general.

Sixteen-week protected period under Family and Medical Leave Act (FMLA) includes both paid and unpaid sick leave and is absolute maximum time that employee may be away from work on medical leave. D.C. Code 1981, § 36-1303(a), (b)(2). Harrison v. Children's Nat'l Medical Ctr., 678 A.2d 572, 1996 D.C. App. LEXIS 128 (1996).

§ 32-515. Family and Medical Leave Commission established.

Expired.

Prior Codifications. — 1981 Ed., § 36-1315.

Editor's notes. — Expiration of Family and Medical Leave Commission: Subsection (e) of former § 36-1315, which was derived from D.C. Law 8-181, § 16, provided that the Family and Medical Leave Commission "shall continue in existence for 5 years at which time the Commission shall terminate unless the Council determines that the Commission shall continue in existence or be reestablished." The Family and Medical Leave Commission is deemed to have expired October 3, 1995.

§ 32-516. Applicability.

The rights and responsibilities established by this chapter shall apply:

(1) During the 3-year period beginning 180 days from October 3, 1990, to any employer who employs 50 or more persons in the District; and

(2) After the 3-year period beginning 180 days from October 3, 1990, to any employer who employs 20 or more persons in the District.

(Oct. 3, 1990, D.C. Law 8-181, § 17, 37 DCR 5043.)

Prior Codifications. — 1981 Ed., § 36-1316.

Legislative history of Law 8-181. — For legislative history of D.C. Law 8-181, see Historical and Statutory Notes following § 32-501.

§ 32-517. Rules.

(a) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement the provisions of this chapter within 90 days from October 3, 1990. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period the proposed rules shall be deemed approved.

(b) The proposed rules shall include standards for:

(1) The definition of the term "family member";

(2) The reasonable notice that an employee who seeks to take family or medical leave shall give to an employer; and

(3) The administrative enforcement procedure.

(Oct. 3, 1990, D.C. Law 8-181, § 18, 37 DCR 5043.)

Prior Codifications. — 1981 Ed., § 36-1317.

Legislative history of Law 8-181. — For legislative history of D.C. Law 8-181, see Historical and Statutory Notes following § 32-501.

Editor's notes. — Family and Medical Leave Act Rulemaking Approval Resolution of 1991: Pursuant to Resolution 9-64, effective June 14, 1991, the Council approved proposed rules to implement the District of Columbia Family and Medical Leave Act of 1990.

CHAPTER 5A. FREEDOM TO CONTRACT WITHIN THE BROADCAST INDUSTRY.

Sec.
32-531. Definitions.
32-532. Unenforceability of broadcasting industry contract provisions restricting employment after expiration of contract or termination of employment.
32-533. Penalty.

§ 32-531. Definitions.

For the purposes of this chapter, the term "broadcasting industry employment contract" means an employment contract executed, extended, or renewed after January 1, 2003 between a person, other than a sales representative, and a legal entity that owns or operates one or more television stations or networks, one or more radio stations or networks, one or more cable stations or networks, or one or more satellite-based services similar to a broadcast station or network, or any other entity that provides broadcasting services such as news, weather, traffic, sports, or entertainment programming.

(Mar. 27, 2003, D.C. Law 14-258, § 2, 50 DCR 246.)

Legislative history of Law 14-258. — Law 14-258, the "Broadcast Industry Contracting Freedom Act of 2002", was introduced in Council and assigned Bill No. 14-812, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on November 7, 2002, and December 3, 2002, respectively. Signed by the Mayor on December 23, 2002, it was assigned Act No. 14-555 and transmitted to both Houses of Congress for its review. D.C. Law 14-258 became effective on March 27, 2003.

§ 32-532. Unenforceability of broadcasting industry contract provisions restricting employment after expiration of contract or termination of employment.

A broadcasting industry employment contract provision that requires an employee or prospective employee to refrain from obtaining similar employment with another broadcasting industry employer following expiration of the contract or upon termination of employment shall be unenforceable.

(Mar. 27, 2003, D.C. Law 14-258, § 3, 50 DCR 246.)

Legislative history of Law 14-258. — For Law 14-258, see notes following § 32-531.

§ 32-533. Penalty.

Any broadcasting industry employer who violates § 32-532 shall be liable for damages, attorney's fees, and costs.

(Mar. 27, 2003, D.C. Law 14-258, § 4, 50 DCR 246.)

Legislative history of Law 14-258. — For Law 14-258, see notes following § 32-531.

CHAPTER 6. GOVERNMENT PAY EQUITY AND TRAINING.

Sec.
32-601. Definitions.
32-602. Temporary Commission on Pay Equity and Training established.
32-603. Design and methodology of study; selection of consultants.
32-604. Findings and recommendations of consultant.
32-605. Cooperation with consultant.
32-606. Application.
32-607. Final report.
32-608. Mayor's recommendations on review of final report.
32-609. Funding.

§ 32-601. Definitions.

For the purposes of this chapter, the term:

(1) "Council" means the Council of the District of Columbia.

(2) "District" means the District of Columbia government.

(3) "Discriminatory wage differentials" means differences in rates of pay resulting from the use of discriminatory wage-setting practices.

(4) "Discriminatory wage-setting practices":

(A) With regard to gender, means practices resulting in a situation where the rates of pay for positions or position classifications that are dominated (composed 70% or more) by members of 1 sex are lower than the rates of pay for positions or position classifications that are dominated (composed 70% or more) by members of the opposite sex, although the work performed is of comparable value as measured by the composite of the skill, effort, responsibilities, and working conditions normally required in the performance of the work.

(B) With regard to race, means practices resulting in a situation where the rates of pay for positions or position classifications that have a disproportionate representation of employees from a nationally recognized minority race are lower than the rates of pay for positions that are nonminority dominated, although the work performed is of comparable value as measured by the composite of the skill, effort, responsibilities, and working conditions normally required in the performance of the work.

(5) "Effort" means the energy required in the performance of work, including any intellectual or physical energy.

(6) "Employee" means an individual employed by the District or any of its independent agencies, including the public schools of the District of Columbia and the University of the District of Columbia, who performs a function of the District and who receives compensation for the performance of these services.

(7) "Equitable job-evaluation technique" means an objective method of determining the comparable value of different positions or position classifications using a system that rates numerically the composite of the skill, effort, responsibilities, and working conditions normally required in the performance of the work, and that does not discriminate, either intentionally or in its effects, on the basis of race, color, religion, sex, or any other basis prohibited by Chapter 14 of Title 2.

(8) "Mayor" means the Mayor of the District of Columbia.

(9) "Position" means the job an employee holds and the duties and responsibilities assigned to an employee.

(10) "Position classification" means a group or class of positions that is sufficiently similar as to kind or subject matter of work, level of difficulty, responsibility, and qualification requirements to warrant similar treatment in personnel and pay administration.

(11) "Protected classes" means those groups of individuals against whom acts of discrimination are barred by Chapter 14 of Title 2.

(12) "Responsibility" means the duties and obligations involved in the performance of a job, including the extent to which the District relies on an employee to perform the work, the importance of the duties, and the accountability of the employee for the work of others and for resources.

(13) "Skill" means the competence required in the performance of the work including any type of intellectual or physical skill acquired through experience, training, education, or natural ability.

(14) "Working conditions" means the environment in which an employee performs work, including physical and psychological factors.

(Feb. 24, 1987, D.C. Law 6-162, § 2, 33 DCR 6684.)

Prior Codifications. — 1981 Ed., § 36-1101.

Legislative history of Law 6-162. — Law 6-162, the "District of Columbia Government Pay Equity and Training Act of 1986," was introduced in Council and assigned Bill No. 6-219, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 8, 1986, and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was assigned Act No. 6-208 and transmitted to both Houses of Congress for its review.

§ 32-602. Temporary Commission on Pay Equity and Training established.

(a) There is established a Temporary Commission on Pay Equity and Training ("Commission").

(b) The Commission shall consist of 15 members appointed as follows:

(1) Five members appointed by the Mayor who shall include:

(A) The Director of the Office of Personnel or the Director's designee;

(B) The Director of the Department of Employment Services or the Director's designee;

(C) The Director of the Office of Human Rights or the Director's designee; and

(D) The Executive Director of the Commission for Women or the Executive Director's designee;

(2) One member appointed by the Chairperson of the Committee on Government Operations;

(3) One member appointed by the Chairperson of the Committee on Housing and Economic Development;

(4) One member appointed by the Chairperson of the Committee on Public Service;

(5) One member appointed by the Board of Education;

(6) The Executive Director of the D.C. General Hospital Commission;

(7) Four members selected from and appointed by a panel composed of 1 officer from each of the 6 largest public sector unions that each serve as the

exclusive representative of employees in more than 5 job classifications and who are:

(A) More than 30% female; and

(B) More than 50% minority; and

(8) One member appointed by a panel composed of 1 officer of each of the unions not affiliated with the AFL-CIO representing (as exclusive representatives) a proportion of female employees that is greater than 30%, and a proportion of minority employees that is greater than 50%.

(c) To the extent practicable, appointments under this section shall be made with a view towards maintaining a fair balance reflecting the gender and racial compositions of the District workforce. All Commission members shall be residents of the District.

(d) Members of the Commission shall be appointed within 30 days of February 24, 1987. The chairperson of the Commission shall convene an organizational meeting no later than 15 days after the appointments have been made.

(e) The Commission shall cease to exist 60 days after its report has been submitted to the Council.

(f) Vacancies occurring within the Commission shall be filled in the same manner as the original appointees, as provided for in subsection (b) of this section.

(g) The Commission shall determine its organization and may elect its own officers.

(h) A written transcript or a transcription shall be kept for all meetings at which a vote is taken.

(i) A majority of the members of the Commission shall constitute a quorum.

(j) The Commission shall meet at the call of the chair or a majority of its members, but at least once every 2 months.

(k) Members of the Commission shall not be considered to be employees of the District by reason of appointment to the Commission and shall not receive pay by reason of service as members. In the event that a member is a District employee, that person shall not lose pay as a result of time served on the Commission.

(Feb. 24, 1987, D.C. Law 6-162, § 3, 33 DCR 6684.)

Prior Codifications. — 1981 Ed., § 36-1102.

Legislative history of Law 6-162. — For legislative history of D.C. Law 6-162, see Historical and Statutory Notes following § 32-601.

§ 32-603. Design and methodology of study; selection of consultants.

Beginning 30 days after February 24, 1987:

(1) The Commission shall determine the design and methodology of the study and any other matters concerning the conduct of the study that the Commission may consider appropriate. These specifications shall be forwarded to the Department of Administrative Services, which shall prepare and process

the solicitation. A list of all respondents to the solicitation shall be forwarded to the Commission by the Department of Administrative Services.

(2) A list of 5 qualified consultants, selected pursuant to competitive bidding procedures, shall be submitted to the Chairman of the Committee on Government Operations and to the Mayor by the Commission. Within 45 calendar days of receipt of the list, the Chairman of the Committee on Government Operations and the Mayor shall meet and select the consultant from the list using the alternate strike method as follows: The Mayor shall strike the 1st name, the Chair of the Committee on Government Operations shall strike the 2nd, and alternate strikes shall continue until 1 name remains.

(Feb. 24, 1987, D.C. Law 6-162, § 4, 33 DCR 6684.)

Section references. — This section is referred to in §§ 32-604 and 32-605.

Prior Codifications. — 1981 Ed., § 36-1103.

Legislative history of Law 6-162. — For legislative history of D.C. Law 6-162, see Historical and Statutory Notes following § 32-601.

§ 32-604. Findings and recommendations of consultant.

(a) In order to carry out the purposes of this chapter, the Department of Administrative Services shall provide, by contract with the consultant selected under § 32-603, for the conduct of a study and the preparation of a report by the consultant:

(1) Containing the findings of the consultant pursuant to a study that explores whether there are discriminatory wage-setting practices and discriminatory wage differentials within any of the District's position classification systems and includes a list of any positions determined as being subject to discriminatory wage-setting practices and the extent to which any discriminatory wage differentials are attributable to the practices;

(2) Identifying, where applicable, alternative measures for eliminating those discriminatory practices and differentials set forth in the consultant's findings made pursuant to paragraph (1) of this subsection, other than any measure that would result in a reduction in the rate of pay, or a cap on the rate of pay for any position, including proposals relating to the development and use of equitable job-evaluation techniques and training programs for individuals who would be responsible for implementing those measures;

(3) Specifying any measures identified under paragraph (2) of this subsection that are authorized under current law and making recommendations for any legislative, Mayoral, or other action, other than any action that would result in a reduction in the rate of pay for any existing positions, which may be necessary in order to carry out the other measures identified under paragraph (2) of this subsection; and

(4) Setting forth a list showing by bargaining unit, where appropriate, and by pay plan for those employees not covered by collective bargaining agreements, gender and race-dominated classes in the District Career, Educational, Executive, and Excepted Services for which there exists a discriminatory wage differential.

(b) Under the contract, the consultant shall be required to:

(1) Meet jointly with the Commission and the Committee on Government Operations on a regular basis in order to keep the District informed of the progress and other developments in the performance of the study and to obtain any views or recommendations from them; and

(2) Submit a report of his or her findings to the Commission within 18 months after the effective date of the contract.

(c) The information exchanged at the meetings held under subsection (b)(1) of this section shall be considered confidential until the final report is submitted pursuant to § 32-607.

(Feb. 24, 1987, D.C. Law 6-162, § 5, 33 DCR 6684.)

Section references. — This section is referred to in § 32-607.

Prior Codifications. — 1981 Ed., § 36-1104.

Legislative history of Law 6-162. — For legislative history of D.C. Law 6-162, see Historical and Statutory Notes following § 32-601.

§ 32-605. Cooperation with consultant.

(a) Each agency of government shall cooperate with the consultant selected pursuant to § 32-603(2) in the conduct of the study under this chapter. Each agency shall provide any data, reports, or other information, in a timely manner, that the consultant may request in the course of the study. All information shall be kept confidential by the consultant until the final report is issued.

(b) The Office of Personnel shall provide, in a timely manner, the Commission with any information that the Commission considers necessary in order to carry out its responsibilities under this chapter. All information shall be kept confidential until the final report is issued pursuant to § 32-607.

(c) Nothing in this section authorizes the disclosure of any information if, or to the extent that, the disclosure would otherwise be prohibited by law.

(d) The Mayor shall provide administrative support, space, and other resources needed by the Commission.

(Feb. 24, 1987, D.C. Law 6-162, § 6, 33 DCR 6684.)

Prior Codifications. — 1981 Ed., § 36-1105.

Legislative history of Law 6-162. — For legislative history of D.C. Law 6-162, see Historical and Statutory Notes following § 32-601.

§ 32-606. Application.

Nothing in this chapter shall be construed to limit any of the rights or remedies provided under 42 U.S.C. § 2000e et seq., 29 U.S.C. § 206(d), Chapter 14 of Title 2, or any other provisions of law relating to discrimination on the basis of race, color, religion, sex, or national origin.

(Feb. 24, 1987, D.C. Law 6-162, § 7, 33 DCR 6684.)

Prior Codifications. — 1981 Ed., § 36-1106.

Legislative history of Law 6-162. — For legislative history of D.C. Law 6-162, see Historical and Statutory Notes following § 32-601.

§ 32-607. Final report.

Within 180 days after receipt of the consultant's findings, the Commission shall simultaneously submit to the Council, to the Mayor, and to the Chairman of the Committee on Government Operations its final report that shall consist of the consultant's findings, and any written comments of individual Commission members. In the final report the Commission shall also:

(1) Specify a plan including a timetable to carry out each of the consultant's recommendations, or, in the event that the Commission does not specify a plan to carry out 1 or more of the recommendations, give reasons for not specifying a plan;

(2) Collect and evaluate research findings with respect to training technology and effectiveness;

(3) Identify functional areas where new or expanded training activities and apprenticeship opportunities are needed, specifically for the purpose of providing new opportunities for any groups that are found to be discriminated against based upon the findings of the consultant's study;

(4) Identify methods of improving the interagency coordination of training programs and resources and recruitment to encourage upward mobility in gender and race-dominated career areas;

(5) Advise the Council and the Mayor on means of strengthening programs for training generally in the District;

(6) Analyze and evaluate the skill level, criteria, and proficiency requirements for determining an employee's eligibility for training and career advancement as a result of successful completion of training; and

(7) Submit to the Council estimates of any funds necessary within each bargaining unit or pay plan for the elimination of any discriminatory wage differentials that may be found to exist for position classifications on the list established pursuant to § 32-604(a)(4).

(Feb. 24, 1987, D.C. Law 6-162, § 8, 33 DCR 6684.)

Section references. — This section is referred to in §§ 32-604 and 32-605.

Prior Codifications. — 1981 Ed., § 36-1107.

Legislative history of Law 6-162. — For legislative history of D.C. Law 6-162, see Historical and Statutory Notes following § 32-601.

§ 32-608. Mayor's recommendations on review of final report.

The Mayor shall review the conclusions and recommendations of the final report and, within a period not to exceed 60 days, shall transmit to the Council his conclusions accompanied by any recommendations, modifications, and reasons thereof. The Council shall consider this transmittal and shall, within a period not to exceed 180 days, develop legislation, if necessary, to implement all or parts of the Commission's final report and the Mayor's recommendations.

(Feb. 24, 1987, D.C. Law 6-162, § 9, 33 DCR 6684.)

Prior Codifications. — 1981 Ed., § 36-1108.

Legislative history of Law 6-162. — For legislative history of D.C. Law 6-162, see Historical and Statutory Notes following § 32-601.

§ 32-609. Funding.

There is authorized out of the revenues available to the District sums necessary to carry out the purposes of this chapter. The authorized amount shall not exceed $200,000.

(Feb. 24, 1987, D.C. Law 6-162, § 10, 33 DCR 6684.)

Prior Codifications. — 1981 Ed., § 36-1109.

Legislative history of Law 6-162. — For legislative history of D.C. Law 6-162, see Historical and Statutory Notes following § 32-601.

CHAPTER 7. HEALTH CARE BENEFITS EXPANSION.

Sec.
32-701. Definitions.
32-702. Domestic partnership registration and termination procedures.
32-703. Enforcement by civil action.
32-704. Domestic partnership benefits.
32-705. District government employees — Domestic partnership and family member benefits.
32-706. Optional self-financed coverage: District of Columbia Employees Health Benefits Program.
32-707. [Omitted.]
32-708. Recordkeeping requirements.
32-709. Rulemaking.
32-710. Effect on existing rights and benefits.

§ 32-701. Definitions.

For the purposes of this chapter, the term:

(1) "Committed relationship" means a familial relationship between 2 individuals characterized by mutual caring and the sharing of a mutual residence.

(2) "District government employee" means any employee eligible for the District of Columbia Employees Health Benefits Program.

(3) "Domestic partner" means a person with whom an individual maintains a committed relationship as defined in paragraph (1) of this section and who has registered under § 32-702(a). Each partner shall:

(A) Be at least 18 years old and competent to contract;

(B) Be the sole domestic partner of the other person; and

(C) Not be married.

(4) "Domestic partnership" means the relationship between 2 persons who become domestic partners by registering in accordance with § 32-702.

(5) "Employee" means any individual employed by an employer.

(6) "Employer" means any individual, firm, partnership, mutual company, joint stock company, association, corporation, unincorporated organization, incorporated society, labor union, receiver, trustee, agent or representative of any of the foregoing, and the District of Columbia government which, for compensation, employs an individual.

(7) "Family member" means:

(A) A domestic partner; or

(B) A dependent child of a domestic partner, which shall include, for the purposes of this section, an unmarried person under 22 years of age, an unmarried person under 25 years of age who is a full-time student, or an unmarried person regardless of age who is incapable of self-support because of a mental or physical disability that existed before age 22. A dependent child of a domestic partner shall include a natural child, adopted child, stepchild, foster child, or child in the legal custody of a domestic partner.

(June 11, 1992, D.C. Law 9-114, § 2, 39 DCR 2861.)

Prior Codifications. — 1981 Ed., § 36-1401.

Legislative history of Law 9-114. — Law 9-114, the "Health Care Benefits Expansion Act of 1992," was introduced in Council and assigned Bill No. 9-162, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 3, 1992, and April 7, 1992, respectively. Signed by the Mayor on April 15, 1992, it

was assigned Act No. 9-188 and transmitted to both Houses of Congress for its review. D.C. Law 9-114 became effective on June 11, 1992.

Delegation of Authority. — Delegation of authority under D.C. Act 9-114, the Health Care Benefits Expansion Act of 1992, see Mayor's Order 92-102, September 14, 1992.

Delegation of Authority Under D.C. Law 9-114, the Health Care Benefits Expansion Act of 1992, see Mayor's Order 2002-56, March 29, 2002 (49 DCR 2945).

Editor's notes. — Feasibility Study for Federal Employees Health Benefits Program: See § 8 of the Health Care Benefits Expansion Act of 1992 (D.C. Law 9-114).

Mayor authorized to issue rules: Section 10 of D.C. Law 9-114 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1 subchapter I of Chapter 5 of Title 2, 2001 Ed., issue rules to implement the provisions of the act.

§ 32-702. Domestic partnership registration and termination procedures.

(a) To establish the existence of a domestic partnership and to qualify for benefits under §§ 32-704, 32-705, and 32-706, persons shall register as domestic partners by executing a declaration of domestic partnership to be filed with the Mayor. For the purposes of this section, the declaration shall be signed by the domestic partners and shall affirm under penalty of perjury that each domestic partner:

(1) Is at least 18 years old and competent to contract;

(2) Is the sole domestic partner of the other person; and

(3) Is not married.

(b) Before accepting a declaration of domestic partnership, the Mayor may examine any applicant under oath to ascertain the names and ages of the persons desiring to register as domestic partners and any other information as required by subsection (a) of this section.

(c) All information contained in a declaration of domestic partnership, except the address of the partners, shall be open to inspection as a public record.

(d) A domestic partnership may be terminated only by the following methods:

(1) Either domestic partner may terminate the domestic partnership by filing a termination statement with the Mayor. The person filing the termination statement shall declare that:

(A) The domestic partnership is to be terminated; and

(B) A copy of the termination statement has been served on the other domestic partner if the termination statement is not signed by both domestic partners.

(2) A domestic partner may terminate a domestic partnership because the other domestic partner has abandoned the domestic partnership by filing a termination statement with the Mayor. The person filing the termination statement shall declare that:

(A) The domestic partnership is to be terminated;

(B) The other domestic partner permanently departed the mutual residence at least 6 months before the filing of the termination statement, or has not been in contact with the domestic partner filing the termination statement for at least 6 months preceding the filing of the termination statement; and

(C) If the location of the other domestic partner is known, a copy of the termination statement has been served on the other domestic partner.

(3) A domestic partnership shall terminate by operation of law if the domestic partners marry each other.

(4) A domestic partnership shall terminate upon the death of either domestic partner.

(e)(1) A termination pursuant to subsection (d)(1) of this section shall take effect 6 months after the termination statement is filed, during which period benefits will continue to accrue.

(2) A termination pursuant to subsection (d)(2) of this section shall take effect immediately upon the filing of the statement.

(3) A termination pursuant to subsection (d)(3) of this section shall take effect immediately upon the date of the certification of marriage.

(4) A termination pursuant to subsection (d)(4) of this section shall take effect immediately upon the death of the domestic partner.

(5) No provision of this subsection shall be interpreted to terminate any rights or benefits otherwise afforded under the law to a surviving domestic partner.

(f) A District government employee who is separated from service, or an employee's dependent child who ceases to be a dependent, may be eligible for extended health benefits coverage in accordance with § 1-621.14.

(g) In accordance with the rules issued pursuant to § 32-708, the Mayor may charge a fee for filing a declaration of domestic partnership, a domestic partnership termination statement, and for filing any amendments to the declaration or termination statement.

(h) District residents who are not District government employees may register as domestic partners by executing a declaration of domestic partnership to be filed with the Mayor in accordance with subsections (a) through (g) of this section.

(i)(1) Except as provided in paragraph (2) of this subsection, relationships established in accordance with the laws of other jurisdictions, other than marriages, that are substantially similar to domestic partnerships established by this chapter, as certified by the Mayor, shall be recognized as domestic partnerships in the District. The Mayor shall establish and maintain a certified list of jurisdictions so recognized. The Mayor shall broadly construe the term "substantially similar" to maximize the recognition of relationships from other jurisdictions as domestic partnerships in the District.

(2) If the Mayor has not yet certified, pursuant to paragraph (1) of this subsection, that the laws of a jurisdiction permit the establishment of relationships substantially similar to domestic partnerships established by this chapter, and if the laws of that jurisdiction prescribe that the relationship, regardless of the term or phrase used to refer to the relationship, has all the rights and responsibilities of marriage under the laws of that jurisdiction, the relationship shall be recognized as a domestic partnership in the District and the Mayor shall include that jurisdiction in the certified list required under paragraph (1) of this subsection.

(j)(1) Two persons in a valid domestic partnership pursuant to this chapter

may apply for and receive a marriage license in accordance with Chapter 4 of Title 46 [§ 46-401] *passim*.

(2) Two persons who are in a domestic partnership and have registered their domestic partnership pursuant to this section shall not be charged a marriage license fee.

(June 11, 1992, D.C. Law 9-114, § 3, 39 DCR 2861; Mar. 24, 1998, D.C. Law 12-81, § 50, 45 DCR 745; Sept. 12, 2008, D.C. Law 17-231, § 30, 55 DCR 6758; July 18, 2008, D.C. Law 18-33, § 4, 56 DCR 4269; Dec. 10, 2009, D.C. Law 18-88, § 405, 56 DCR 7413; Mar. 3, 2010, D.C. Law 18-110, § 3, 57 DCR 27.)

Prior Codifications. — 1981 Ed., § 36-1402.

Effect of amendments. — D.C. Law 17-231 rewrote subsecs. (d) and (e); in subsec. (h), substituted "District residents who are not government employees" for "Private sector employees"; and added subsec. (i).

D.C. Law 18-33 rewrote subsec. (i), which read as follows: "(i) Relationships established in accordance with the laws of other jurisdictions that are substantially similar to domestic partnerships established by this chapter, as certified by the Mayor, shall be recognized as domestic partnerships in the District."

D.C. Law 18-88, in subsec. (h), substituted "District government" for "government".

D.C. Law 18-110 rewrote subsec. (d)(3); in subsec. (e)(3), substituted "certification of marriage" for "marriage"; and added subsec. (j). Prior to amendment, subsec. (d)(3) read as follows: "(3) A domestic partnership shall terminate if the domestic partners marry each other. Notice that the domestic partnership has been terminated in this manner shall be provided to the Mayor within 30 days of the marriage."

Emergency legislation. — For temporary (90 day) amendment of section, see § 405 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 405 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 9-114. — For legislative history of D.C. Law 9-114, see Historical and Statutory Notes following § 32-701.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 32-408.

Legislative history of Law 18-33. — Law 18-33, the "Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009", was introduced in Council and assigned Bill No. 18-66, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 7, 2009, and May 5, 2009, respectively. Signed by the Mayor on May 21, 2008, it was assigned Act No. 18-66 and transmitted to both Houses of Congress for its review. D.C. Law 18-33 became effective on July 18, 2008.

Legislative history of Law 18-88. — Law 18-88, the "Omnibus Public Safety and Justice Amendment Act of 2009", as introduced in Council and assigned Bill No. 18-151, which was referred to the Committee on Public Safety and the Judiciary. The bill as adopted on first and second readings on June 30, 2009, and July 31, 2009, respectively. Signed by the Mayor on August 26, 2009, it was assigned Act No. 18-189 and transmitted to both Houses of Congress for its review. D.C. Law 18-88 became effective on December 10, 2009.

Legislative history of Law 18-110. — Law 18-110, the "Religious Freedom and Civil Marriage Equality Amendment Act of 2009", was introduced in Council and assigned Bill No. 18-482, which was referred to the Committee on Public Safety and the Judiciary. The bill was adopted on first and second readings on December 1, 2009, and December 15, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-248 and transmitted to both Houses of Congress for its review. D.C. Law 18-110 became effective on March 3,

§ 32-703. Enforcement by civil action.

Any person or employer may bring a civil action in any court of competent

jurisdiction against the appropriate domestic partner(s) to recover damages as a result of:

(1) A false statement in a declaration of domestic partnership or a false assertion of family membership; or

(2) A failure to notify the Mayor or the employer of a change in the status of the domestic partnership or family membership.

(June 11, 1992, D.C. Law 9-114, § 4, 39 DCR 2861.)

Prior Codifications. — 1981 Ed., § 36-1403.

Legislative history of Law 9-114. — For legislative history of D.C. Law 9-114, see Historical and Statutory Notes following § 32-701.

§ 32-704. Domestic partnership benefits.

All health care facilities, including hospitals, convalescent facilities, or other long term care facilities, shall allow a patient's family member as defined in § 32-701(7) to visit the patient.

(June 11, 1992, D.C. Law 9-114, § 5, 39 DCR 2861.)

Section references. — This section is referred to in § 32-702.

Prior Codifications. — 1981 Ed., § 36-1404.

Legislative history of Law 9-114. — For legislative history of D.C. Law 9-114, see Historical and Statutory Notes following § 32-701.

§ 32-705. District government employees — Domestic partnership and family member benefits.

(a) A District government employee shall be granted sick leave when needed to care for a family member as defined in § 32-701(7), subject to the same guidelines and restrictions in § 32-502.

(b) A District government employee shall be granted sick leave to care for a minor child of either domestic partner or to care for the employee's domestic partner who is on maternity or paternity leave, subject to the same guidelines and restrictions in § 32-502.

(c) A District government employee shall be granted funeral leave or annual leave when needed to make arrangements for or attend a funeral or memorial service for a family member as defined in § 32-701(7), subject to the same guidelines and restrictions in § 1-612.03(n).

(d) A District government employee who is adopting or whose domestic partner is adopting a child shall be granted annual leave or leave without pay to make necessary family arrangements, subject to the same guidelines and restrictions in § 32-502.

(June 11, 1992, D.C. Law 9-114, § 6, 39 DCR 2861.)

Section references. — This section is referred to in § 32-702.

Prior Codifications. — 1981 Ed., § 36-1405.

Legislative history of Law 9-114. — For legislative history of D.C. Law 9-114, see Historical and Statutory Notes following § 32-701.

§ 32-706. Optional self-financed coverage: District of Columbia Employees Health Benefits Program.

District government employees enrolled in the District of Columbia Employees Health Benefits Program shall be allowed to purchase family health insurance coverage that would cover the employee's family members as defined in § 32-701(7) in accordance with §§ 1-621.05, 1-621.06, and 1-621.07(a), (c), and (d). A domestic partner shall not simultaneously be enrolled for individual and family member coverage. The employee shall pay 25% of the cost of family health insurance coverage for the domestic partner or family members as defined in § 32-701(7), and the District government shall pay the remaining 75%.

(June 11, 1992, D.C. Law 9-114, § 7, 39 DCR 2861; April 4, 2006, D.C. Law 16-82, 53 DCR 1057.)

Section references. — This section is referred to in § 32-702.

Prior Codifications. — 1981 Ed., § 36-1406.

Effect of amendments. — D.C. Law 16-82 rewrote the section which had read as follows: "District government employees enrolled in the District of Columbia Employees Health Benefits Program shall be allowed to purchase family health insurance coverage that would cover the employee's family members as defined in § 32-701(7) in accordance with §§ 1-621.05, 1-621.06, and 1-621.07(a), (c), and (d). A domestic partner shall not simultaneously be enrolled for individual and family member coverage. The employee shall assume the total additional cost of the family health insurance coverage for the domestic partner or family members as defined in § 32-701(7)."

Legislative history of Law 9-114. — For legislative history of D.C. Law 9-114, see Historical and Statutory Notes following § 32-701.

Legislative history of Law 16-82. — Law 16-82, the "Health Care Benefits Expansion Amendment Act of 2005", was introduced in Council and assigned Bill No. 16-129 which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 6, 2005, and January 4, 2006, respectively. Signed by the Mayor on January 26, 2006, it was assigned Act No. 16-268 and transmitted to both Houses of Congress for its review. D.C. Law 16-82 became effective on April 4, 2006.

Editor's notes. — Section 7066 of D.C. Law 17-219 repealed section 3 of D.C. Law 16-82.

§ 32-707. [Omitted.]

§ 32-708. Recordkeeping requirements.

(a) The Mayor shall maintain adequate records of declarations of domestic partnership, termination statements, and amendments to declarations of domestic partnership and termination statements.

(b) The Mayor shall report annually to the Council on:

(1) The number of domestic partnerships declared and terminated; and

(2) Utilization of domestic partnership benefits by District government employees.

(June 11, 1992, D.C. Law 9-114, § 9, 39 DCR 2861.)

Section references. — This section is referred to in § 32-702.

Prior Codifications. — 1981 Ed., § 36-1407.

Legislative history of Law 9-114. — For legislative history of D.C. Law 9-114, see Historical and Statutory Notes following § 32-701.

§ 32-709. Rulemaking.

(a) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement the provisions of this chapter.

(b) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(June 11, 1992, D.C. Law 9-114, § 10, 39 DCR 2861.)

Resolutions. — Resolution 14-459, the "Domestic Partnership Registration Procedures and Fees Approval Resolution of 2002", was approved effective June 14, 2002.

Resolution 16-920, the "Domestic Partnership Health Care Benefits Expansion Amendment Rulemaking Approval Resolution of 2006", was approved effective November 25, 2006.

Resolution 18-404, the "Domestic Partnership Certified List of Jurisdictions Approval Resolution of 2010", was approved effective March 2, 2010.

§ 32-710. Effect on existing rights and benefits.

(a) Nothing in this chapter shall supersede any provision of law that provides more generous rights or benefits than the domestic partnership or family membership rights and benefits provided pursuant to this chapter.

(b) Nothing in this chapter shall be construed to discourage an employer from providing more generous rights or benefits than the domestic partnership or family membership rights or benefits provided pursuant to this chapter.

(c) Nothing in this chapter shall diminish an employer's obligation to comply with a collective bargaining agreement or an employment benefits program or plan that provides more generous rights or benefits than the domestic partnership or family membership rights or benefits provided pursuant to this chapter.

(d) The domestic partnership or family membership rights or benefits provided pursuant to this chapter shall not be diminished by a collective bargaining agreement or an employment benefit program or plan, except that this chapter shall not supersede any clause on domestic partnership or family membership rights or benefits in a collective bargaining agreement in force on June 11, 1992, excluding any extension or renewal after such date, that the collective bargaining agreement is in effect.

(e) No provision of this chapter shall exempt or relieve, or be construed to exempt or relieve, any person from any duty, liability, penalty, or obligation to provide relief under Chapter 14 of Title 2.

(f) This chapter provides registration and other mechanisms to reduce discrimination prohibited under Chapter 14 of Title 2.

(June 11, 1992, D.C. Law 9-114, § 12, 39 DCR 2861.)

Prior Codifications. — 1981 Ed., § 36-1408.

Temporary Addition of Section. — For temporary (225 day) additions, see §§ 2 to 6 of

Impacted Resident Economic Assistance Temporary Act of 2001 (D.C. Law 14-72, February 27, 2002, law notification 49 DCR 2282).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Impacted Resident Economic Assistance Emergency Act of 2001 (D.C. Act 14-165, November 6, 2001, 48 DCR 10413).

Legislative history of Law 9-114. — For legislative history of D.C. Law 9-114, see Historical and Statutory Notes following § 32-701.

CHAPTER 7A. HEALTH CARE BENEFITS CONTINUATION.

Sec.
32-731. Definitions.
32-732. Continuation of coverage.
32-733. Regulations.
32-734. Applicability.

§ 32-731. Definitions.

For the purposes of this chapter, the term:

(1) "Commissioner" means the Commissioner of the Department of Insurance, Securities, and Banking.

(2) "Covered individual" means a person whose coverage under an employer's health benefits plan is continued under this chapter.

(3) "Health benefits plan" means any accident and health insurance policy or certificate, hospital and medical services corporation contract, health maintenance organization subscriber contract, plan provided by a multiple employer welfare arrangement, or plan provided by another benefit arrangement. The term "health benefit plan" does not mean accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans, pursuant to contracts with the United States government; Medicare supplemental or long-term care insurance; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance, insurance arising out of a worker's compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(4) "Health insurer" means any person that provides one or more health benefit plans or insurance in the District of Columbia, including an insurer, a hospital and medical services corporation, a fraternal benefit society, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of health insurance subject to the authority of the Commissioner.

(June 25, 2002, D.C. Law 14-149, § 2, 49 DCR 4233; June 11, 2004, D.C. Law 15-166, § 4(ii), 51 DCR 2817.)

Effect of amendments. — D.C. Law 15-166, in par. (1), substituted "Commissioner of the Department of Insurance, Securities, and Banking" for "Commissioner of the Department of Insurance and Securities Regulation".

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Continuation of Health Coverage Temporary Act of 2002 (D.C. Law 14-108, April 13, 2002, law notification 49 DCR 4056).

Emergency legislation. — For temporary (90 day) addition of §§ 32-731 to 32-734, see §§ 2 to 5 of Continuation of Health Coverage Emergency Act of 2001 (D.C. Act 14-214, December 17, 2001, 49 DCR 377).

For temporary (90 day) addition of §§ 32-731 to 32-734, see § 2 of Continuation of Health Coverage Congressional Review Emergency Act of 2002 (D.C. Act 14-304, March 25, 2002, 49 DCR 3399).

For temporary (90 day) amendment of section, see § 4(ii) of Consolidation of Financial Services Emergency Amendment Act of 2004 (D.C. Act 15-381, February 27, 2004, 51 DCR 2653).

Legislative history of Law 14-149. — Law 14-149, the "Continuation of Health Coverage Act of 2002", was introduced in Council and assigned Bill No. 14-235, which was referred to the Committee Consumer and Regulatory Af-

fairs. The Bill was adopted on first and second readings on March 5, 2002, and April 9, 2002, respectively. Signed by the Mayor on April 24, 2002, it was assigned Act No. 14-327 and transmitted to both Houses of Congress for its review. D.C. Law 14-149 became effective on June 25, 2002.

Legislative history of Law 15-166. — For Law 15-166, see notes following § 31-1004.

§ 32-732. Continuation of coverage.

(a) An employee has the right to continue coverage under the employer's health benefits plan for a period of 3 months, or for the period of time during which the employee is eligible for premium assistance under the American Recovery and Reinvestment Act of 2009, approved February 17, 2009 (123 Stat. 115; 26 U.S.C. § 1, note), unless the employee:

(1) Was terminated for gross misconduct;

(2) Is eligible for an extension of coverage required under the Consolidated Omnibus Budget Reconciliation Act of 1985, approved April 7, 1986 (100 Stat. 82; codified in scattered sections of the U.S. Code); or

(3) Fails to complete timely election and payment as provided in subsection (h) of this section.

(b) An employee's covered dependents shall have the same right to continue coverage under the employer's health benefits plan as described in subsection (a) of this section if the dependents would otherwise lose coverage under the health benefits plan.

(c) The right to continue coverage includes any dependent coverage under the terms of the existing health benefits plan.

(d) Within 15 days after the date of application, the employer shall forward to the health insurer the names of individuals who apply for an extension of benefits under this chapter.

(e) Each health benefits plan issued by a health insurer to an employer shall contain a provision requiring that the employer furnish employees whose coverage is terminated a written notification of the existence of the right to continue coverage under this chapter. The notification shall be furnished not later than 15 days after the date that coverage under the health benefits plan would otherwise terminate. Failure by an employer to furnish the notification shall not extend the right to continue coverage beyond the time provided for under this chapter.

(f) The evidence of coverage or certificate of coverage furnished to employees by a health insurer shall include a statement advising the employee of his or her right to continue coverage as provided for under this chapter.

(g) The covered individual's cost for continued coverage shall not exceed 102% of the group rate.

(h) An individual who elects to continue coverage under this chapter shall tender to the employer the amount required to continue coverage no later than 45 days after the date coverage would otherwise terminate.

(i) Coverage under this chapter shall continue without interruption and shall not terminate unless:

(1) The covered individual establishes residence outside of the health insurer's service area;

(2) The covered individual fails to make timely payment of the required cost of coverage;

(3) The covered individual violates a material condition of the contract;

(4) The covered individual becomes covered under another group health benefits plan that does not contain any exclusion or limitation with respect to any pre-existing condition that affects the covered individual;

(5) The covered individual becomes entitled to Medicare; or

(6) The employer no longer offers group health benefits coverage to any employee.

(j) If the employer replaces coverage with similar coverage under another health benefits plan, without interruption, the covered individual shall have the right to continue coverage under the replacement health benefits plan for the balance of the covered individual's continuation of benefit period; provided, that the covered individual is otherwise eligible for continuation of coverage.

(k) At the end of the continued benefit period as provided in this chapter, the covered individual shall remain eligible for a converted policy if the benefit is provided in the employer's health benefits plan.

(June 25, 2002, D.C. Law 14-149, § 3, 49 DCR 4233; Mar. 3, 2010, D.C. Law 18-111, § 5041, 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111, in subsec. (a), substituted "3 months, or for the period of time during which the employee is eligible for premium assistance under the American Recovery and Reinvestment Act of 2009, approved February 17, 2009 (123 Stat. 115; 26 U.S.C. § 1, note)," for "3 months,".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Continuation of Health Coverage Temporary Amendment Act of 2009 (D.C. Law 18-20, July 7, 2009, law notification 56 DCR 6122).

Temporary Addition of Section. — For temporary (225 day) addition, see § 3 of Continuation of Health Coverage Temporary Act of 2002 (D.C. Law 14-108, April 13, 2002, law notification 49 DCR 4056).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Continuation of Health Coverage Emergency Amendment Act of 2009 (D.C. Act 18-27, March 16, 2009, 56 DCR 2317).

For temporary (90 day) amendment of section, see § 2 of Continuation of Health Coverage Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-99, May 28, 2009, 56 DCR).

For temporary (90 day) amendment of section, see § 5041 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 5041 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 14-149. — For Law 14-149, see notes following § 32-731.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 32-241.

Short title. — Short title: Section 5040 of D.C. Law 18-111 provided that subtitle E of title V of the act may be cited as the "Continuation of Health Coverage Amendment Act of 2009".

§ 32-733. Regulations.

The Commissioner may issue rules and regulations necessary to implement the provisions of this chapter.

(June 25, 2002, D.C. Law 14-149, § 4, 49 DCR 4233.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 4 of Continuation of Health Coverage Temporary Act of 2002 (D.C. Law 14-108, April 13, 2002, law notification 49 DCR 4056).

Legislative history of Law 14-149. — For Law 14-149, see notes following § 32-731.

§ 32-734. Applicability.

This chapter shall apply to contracts issued or renewed by health insurers on or after January 16, 2002.

(June 25, 2002, D.C. Law 14-149, § 5, 49 DCR 4233.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 5 of Continuation of Health Coverage Temporary Act of 2002 (D.C. Law 14-108, April 13, 2002, law notification 49 DCR 4056).

Legislative history of Law 14-149. — For Law 14-149, see notes following § 32-731.

CHAPTER 7B. JOB OPPORTUNITY BANK.

Sec.
32-751. Definitions.
32-752. Establishment and administration of the Job Opportunity Bank.
32-753. Eligibility for grants.
32-754. Grant applications and priorities.
32-755. Grant agreements.
32-756. Grantee performance evaluation.

§ 32-751. Definitions.

For purposes of this chapter, the term:

(1) "Director" means the Director of the Department of Employment Services.

(2) "Grantee" means any person or entity that receives a grant from the District to provide workforce development services.

(3) "Job skills-deficient resident" means an individual resident of the District whose employment opportunities are restricted by deficiencies in education, work experience, work training, work skills, or the loss of certain occupations or industries from the economy of the District or the Washington Metropolitan Area and whose job skills deficiencies and residence is determined and certified by the Director.

(4) "Low-income District resident" means an individual resident of the District whose personal or family income in the previous 6 months on an annualized basis does not exceed 200% of the lower living standard income level and whose income and residence is certified by the Director.

(5) "Workforce Investment Council" means the body created pursuant to § 32-1603.

(June 8, 2006, D.C. Law 16-118, § 202, 53 DCR 2602.)

Legislative history of Law 16-118. — Law 16-118, the "Way to Work Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-286 which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 7, 2006, and March 7, 2006, respectively. Signed by the Mayor on March 23, 2006, it was assigned Act No. 16-335 and transmitted to both Houses of Congress for its review. D.C. Law 16-118 became effective on June 8, 2006.

§ 32-752. Establishment and administration of the Job Opportunity Bank.

(a) There is established a Job Opportunity Bank for the purpose of providing grants and other forms of financial assistance to increase job opportunities for low-income District residents to upgrade their job skills and provide customized skills training for new and incumbent workers employed by District employers.

(b) The Job Opportunity Bank shall be subject to the general policy guidance and direction of the Workforce Investment Council.

(c) The Workforce Investment Council shall serve in an advisory capacity to the Mayor and the Director in matters pertaining to the operation and administration of the Job Opportunity Bank.

(d) The Job Opportunity Bank shall be funded by annual appropriations.

(e) The funds shall be administered by the Deputy Mayor for Planning and Economic Development.

(f) The Deputy Mayor for Planning and Economic Development may fund applications for grants or other assistance as may be recommended by the Director under the provisions of this chapter.

(June 8, 2006, D.C. Law 16-118, § 203, 53 DCR 2602; Mar. 2, 2007, D.C. Law 16-192, § 2192, 53 DCR 6899; Mar. 25, 2009, D.C. Law 17-353, § 318(b), 56 DCR 1117.)

Effect of amendments. — D.C. Law 16-192 rewrote subsecs. (e) and (f).

D.C. Law 17-353, in subsec. (f), substituted "The" for "Subject to the availability of funds, the".

Emergency legislation. — For temporary (90 day) amendment of section, see § 2192 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2192 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2192 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-118. — For Law 16-118, see notes following § 32-751.

Legislative history of Law 16-192. — Law 16-192, the "Fiscal Year Budget Support Act of 2006", was introduced in Council and assigned Bill No. 16-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 9, 2006, and June 6, 2006, respectively. Signed by the Mayor on August 8, 2006, it was assigned Act No. 16-476 and transmitted to both Houses of Congress for its review. D.C. Law 16-192 became effective on March 2, 2007.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 32-101.

Short title. — Short title: Section 2191 of D.C. Law 16-192 provided that subtitle P of title II of the act may be cited as the "Job Opportunity Fund Clarification Act of 2006".

§ 32-753. Eligibility for grants.

The following individuals and groups shall be eligible to receive grants or other assistance from the Job Opportunity Bank:

(1) Low-income District residents;

(2) Job skills-deficient residents;

(3) District businesses, business coalitions, or nonprofit organizations partnered with District businesses or business coalitions seeking to hire low-income District residents or job skills-deficient residents and develop a workforce from those individuals; or

(4) District businesses, business coalitions, or nonprofit organizations partnered with District businesses or business coalitions seeking to upgrade the skills of their current workforce, composed of at least 51% District residents, in order to maintain the employment of the current workforce.

(June 8, 2006, D.C. Law 16-118, § 204, 53 DCR 2602.)

Legislative history of Law 16-118. — For Law 16-118, see notes following § 32-751.

§ 32-754. Grant applications and priorities.

(a) Grant applications shall be made at the time and in the manner designated by the Director.

(b) Grant applications shall include a detailed budget, cost benefit analysis, identifiable performance benchmarks, and a general description of the employment benefits to be derived by the recipient.

(c) The Director shall accept simplified grant applications from District residents seeking basic employment or job training skills.

(d) Grant applications made by District businesses, business coalitions and partnered-nonprofit organizations shall also include a proposed workforce development program model demonstrating an effective approach to increasing the employability of program participants or the retention of their current workforce and which is directly linked to existing or anticipated employment opportunities. Applications made pursuant to this subsection may be utilized to significantly enhance the skill levels and career opportunities of current employees who are residents of the District.

(e) In evaluating grant applications for decisions as to funding, the Director shall give priority to those applications which the Director determines best serve low-income District residents or job skills-deficient residents in the following categories:

(1) Youths between 18 and 21 years of age;

(2) Recipients of Temporary Assistance to Needy Families;

(3) Dislocated workers;

(4) Ex-offenders;

(5) Veterans; and

(6) District residents deficient in job skills.

(f) In determining whether to fund grant applications, the Director shall consider, in addition to the criteria set forth in subsections (d) and (e) of this section, the following:

(1) The amount of funds available in the Job Opportunity Bank;

(2) Available and reliable information concerning the current and future labor market;

(3) Non-duplication of funding available through section 112 of the Workforce Investment Act of 1998, approved August 7, 1998 (112 Stat. 936; 29 U.S.C. § 2822) and other federal, state, or local job development and job training programs; and

(4) Any prior experience of the applicant with job training or workforce development programs.

(June 8, 2006, D.C. Law 16-118, § 205, 53 DCR 2602.)

Legislative history of Law 16-118. — For Law 16-118, see notes following § 32-751.

§ 32-755. Grant agreements.

Each grantee shall, as a condition for the receipt of funds from the Job Opportunity Bank, enter into a grant agreement with the Director, the form and contents of which shall be specified by the Director, which shall at least contain the following:

(1) The name, address, and telephone number of any individual grant recipient;

(2) The name, address, telephone number, and identity of the corporate officers, principal owners, and registered agent of any incorporated grantee; and

(3) Acknowledgment by the recipient of the right of the Director to:

(A) Monitor expenditure of funds;

(B) Require reports from recipients regarding expenditures, progress, or performance in meeting identified benchmarks, and any other financial or operational information deemed necessary by the Director,

(C) Inspect the recipient's records to obtain the identified information; and

(D) Acknowledgment by the recipient that the Director may curtail or cancel payment of funds from the Job Opportunity Bank if the recipient does not comply with the requirements of this section.

(June 8, 2006, D.C. Law 16-118, § 206, 53 DCR 2602.)

Legislative history of Law 16-118. — For Law 16-118, see notes following § 32-751.

§ 32-756. Grantee performance evaluation.

(a) The Director shall monitor and evaluate the performance of grantees. The Director may terminate or modify grant agreements if the Director determines that a grantee's performance is not in accordance with the grant. Grantees that have their grants cancelled or modified may appeal the Director's action pursuant to § 2-510.

(b) The Mayor shall issue rules to implement this chapter. The rules shall be issued within 120 days of June 8, 2006.

(June 8, 2006, D.C. Law 16-118, § 207, 53 DCR 2602.)

Cross references. — Occupational safety and health, planning, repeal of this subchapter, see § 32-1124.

Legislative history of Law 16-118. — For Law 16-118, see notes following § 32-751.

CHAPTER 8. INDUSTRIAL SAFETY.

Subchapter I. General

Sec.
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Subchapter I. General.

§ 32-801. Purpose of subchapter.

The purpose of this subchapter is to foster, promote, and develop the safety of wage earners of the District of Columbia in relation to their working conditions.

(Sept. 19, 1918, ch. 174, title II, § 1; Oct. 14, 1941, 55 Stat. 738, ch. 438,§ 3.)

Prior Codifications. — 1981 Ed., § 36-221. 1973 Ed., § 36-431.

Legislative history of Law 7-186. — Law 7-186, the "D.C. Occupational Safety and Health Act of 1988," was introduced in Council and assigned Bill No. 7-28, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on September 27, 1988, and October 11, 1988, respectively. Approved without the signature of the Mayor on November 2, 1988, it was assigned Act No. 7-245 and transmitted to both Houses of Congress for its review.

Editor's notes. — Repeal of chapter: Section 25 of D.C. Law 7-186 repeals subchapter II of Chapter 2 of Title 36 Chapter 8 of Title 32, 2001 Ed.. Section 26(a) (D.C. Code, 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 §Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

CASE NOTES

ANALYSIS

Assumption of risk.
In general.
Persons protected.
Premises liability.
Questions for jury.
Summary judgment.

Assumption of risk.

Since a wage earner's claim under statutory safety scheme is not barred unless he incurred injury in willful, wanton, or reckless disregard for his safety, his determination to encounter a situation of risk for purposes of defense of assumption of risk cannot be said to be voluntary unless his determination was, in light of available alternatives, willful, wanton, or reckless. D.C. Code§ 36-431 et seq. Martin v. George Hyman Constr. Co., 395 A.2d 63, 1978 D.C. App. LEXIS 575 (1978).

To the extent that private waiver of duty of employers regarding safety would tend to encourage on their part laxity of conduct in, if not indifference to, maintenance of proper and reasonable safeguards to human life and limb, a private waiver by wage earner for purposes of assumption of risk cannot be given effect. Martin v. George Hyman Constr. Co., 395 A.2d 63, 1978 D.C. App. LEXIS 575 (1978).

Defense of assumption of risk is available to bar a claim based upon breach of a duty imposed by a statutory safety scheme only where defendant bears burden of proving that there

was available to wage earner an alternative to encounter the risk, that wage earner's choice between risk and such alternative was fully voluntary, that such alternative afforded wage earner the safety mandated by statute, rule, or regulation and that wage earner's determination to encounter risk was, under circumstances, made with willful, wanton, or reckless disregard for his own safety. D.C. Code § 36-431 et seq. Martin v. George Hyman Constr. Co., 395 A.2d 63, 1978 D.C. App. LEXIS 575 (1978).

In general.

Disclaimer signed by guard when she began working for security company, in which she waived and released any tort claims against a customer of the company arising from injuries covered by the Workers' Compensation Act (WCA), did not violate public policy; public policy was not violated when an employer chose to protect its customers from liability for workplace injuries and instead compensate its employees itself exclusively through workers' compensation, and, though guard asserted that the disclaimer limited liability for violations of Occupational Safety and Health Act (OSHA) and the District of Columbia Industrial Safety Act, OSHA and the Safety Act did not impose strict liability but rather served to establish standards of care. Brown v. 1301 K St. Ltd. P'ship, 31 A.3d 902, 2011 D.C. App. LEXIS 673 (2011).

Industrial Safety Act is not a strict liability statute; rather, the Act imposes a statutory duty of due care. Velasquez v. Essex Condo. Ass'n, 759 A.2d 676, 2000 D.C. App. LEXIS 225 (2000).

Persons protected.

General contractor's violation of federal and District of Columbia regulations, that were directed at employer-employee relationship, could be considered in determining whether general contractor breached duty to employment applicant by failure to construct landing at base of stairwell, to ensure sufficient lighting, and to place barricades in front of unfinished stairwell; calling into doubt Kurtz v. Capital Wall Paper Co., 61 A.2d 470 (D.C.). Occupational Safety and Health Act of 1970, §§ 2-33, 29 U.S.C. §§ 651-678; D.C. Code 1981, §§ 36-221 to 36-232. Jeffries v. Potomac Dev. Corp., 822 F.2d 87, 1987 U.S. App. LEXIS 8158 (C.A.D.C. 1987).

General contractor owes subcontractor's employee a duty to provide reasonably safe conditions of employment. D.C. Code 1981, § 36-221 et seq. Fry v. Diamond Constr., 659 A.2d 241, 1995 D.C. App. LEXIS 108 (1995).

The Act creating the Minimum Wage and Industrial Safety Board affects the relationship between employer and employee only, and safety regulations promulgated by board pursuant to act did not apply to plaintiff, a wall paper hanger who was not an employee of defendant operator of wall paper company, who was injured when a rod flew out of a wall paper trimming machine owned by defendant and being used by plaintiff in hanging wall paper purchased by plaintiff from defendant. D.C. Code 1940, § 36-401 et seq. Kurtz v. Capital Wall Paper Co., 61 A.2d 470, 1948 D.C. App. LEXIS 183 (Cr.App. 1948).

Premises liability.

Evidence that general contractor violated federal and District of Columbia regulations directed to employer-employee relationship by failure to construct landing at base of stairwell, to ensure sufficient lighting, and to place barricades in front of unfinished stairwell was relevant and admissible to whether general contractor breached duty to employment applicant and was negligent. Occupational Safety and Health Act of 1970, §§ 2-33, 29 U.S.C. §§ 651-678; D.C. Code 1981, §§ 36-221 to 36-232. Jeffries v. Potomac Dev. Corp., 822 F.2d 87, 1987 U.S. App. LEXIS 8158 (C.A.D.C. 1987).

By enactment of the District of Columbia Industrial Safety Act, Congress imposed an affirmative duty upon persons with control over places of employment or employees to provide reasonably safe working conditions, and at the same time, an employer's duty under the statute is limited to those elements of the workplace over which it has control or custody. Velasquez v. Essex Condo. Ass'n, 759 A.2d 676, 2000 D.C. App. LEXIS 225 (2000).

Questions for jury.

For purposes of rule that employer is liable for injuries caused by negligence of independent contractor where work performed by contractor is inherently dangerous, existence of danger and knowledge of it by employer are normally questions of fact for jury. Fry v. Diamond Constr., 659 A.2d 241, 1995 D.C. App. LEXIS 108 (1995).

In action by subcontractor's wage earner against contractor arising out of fall on stairway on construction project, issue of whether stairway was "substantially complete" within meaning of safety regulations so as to impose duty upon contractor to install wooden treads and handrails was for jury. D.C. Code § 36-433. Martin v. George Hyman Constr. Co., 395 A.2d 63, 1978 D.C. App. LEXIS 575 (1978).

In action by subcontractor's wage earner against contractor arising from fall on stairway on construction project, issue of whether defenses of contributory negligence and assumption of risk were available to contractor was for jury. D.C. Code §§ 36-433, 36-438(a). Martin v. George Hyman Constr. Co., 395 A.2d 63, 1978 D.C. App. LEXIS 575 (1978).

Summary judgment.

Genuine issue of material fact existed as to

whether general contractor was negligent in continuing to use its subcontractor after unsafe "scaffolding and ladder" arrangement subcontractor was using had been brought to attention of general contractor's safety officer, precluding summary judgment on whether general contractor was liable for injuries sustained by subcontractor's employee when he fell off ladder. Fry v. Diamond Constr., 659 A.2d 241, 1995 D.C. App. LEXIS 108 (1995).

Genuine issues of material fact existed as to whether work performed by painting subcontractor was inherently dangerous which exposed a subcontractor's employee to peculiar risk of harm so as to render general contractor liable for injuries sustained by subcontractor's employee, precluding summary judgment. Fry v. Diamond Constr., 659 A.2d 241, 1995 D.C. App. LEXIS 108 (1995).

§ 32-802. Definitions.

When used in this subchapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

(1) "Employer" includes every person, firm, corporation, partnership, stock association, agent, manager, representative, or foreman, or other persons having control or custody of any place of employment or of any employee. It shall not include the District of Columbia or any instrumentality thereof, or the United States or any instrumentality thereof.

(2) "Board" means the Minimum Wage and Industrial Safety Board.

(3) "Safe" and "safety" as applied to an employment, a device, or a place of employment, including facilities of sanitation and hygiene, mean such freedom from danger to life or health of employees as circumstances reasonably permit, and shall not be given restrictive interpretation so as to exclude any mitigation or prevention of a specific danger.

(4) "Place of employment" means any place where employment is carried on; provided, however, that such term shall not include the premises of any federal or District of Columbia establishment, except to include any and all work of whatever nature being performed by an independent contractor for the United States government or any instrumentality thereof, or the District of Columbia or any instrumentality thereof.

(Sept. 19, 1918, ch. 174, title II, § 2; Oct. 14, 1941, 55 Stat. 738, ch. 438,§ 3; Jan. 5, 1971, 84 Stat. 1936, Pub. L. 91-650, title V, § 501(1).)

Prior Codifications. — 1981 Ed., § 36-222. 1973 Ed., § 36-432.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-801.

References in text. — The Minimum Wage and Industrial Safety Board, referred to in paragraph (2) of this section, was replaced by the District of Columbia Occupational Safety and Health Board, pursuant to D.C. Law 7-186, §§ 6 and 25, codified at § 32-1105 and providing for the repeal of §§ 32-801 to 32-812.

Editor's notes. — Repeal of chapter: See Historical and Statutory Notes following § 32-801.

§ 32-803. Additional duties of Board under this subchapter.

The Board, in addition to its duties defined in subchapter I of Chapter 10 of this title shall administer the provisions of this subchapter and shall have power to make such inspections and investigations as it may deem necessary; collect and compile statistical information; require employers to keep their places of employment reasonably safe; require employers to keep such records

as it may deem advisable and to furnish the Board with complete, detailed reports relative to all accidents. The Council of the District of Columbia shall have power to determine and fix reasonable standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of employment; promulgate general rules and regulations based upon such standards and fix the minimum safety requirements which shall be complied with by employers within the purview of this subchapter. To promote the safety of persons employed in existing buildings or other existing structures, such rules, regulations, and standards may require, without limitation, changes in the permanent or temporary features of such buildings or other structures.

(Sept. 19, 1918, ch. 174, title II, § 3; Oct. 14, 1941, 55 Stat. 738, ch. 438,§ 3; Jan. 5, 1971, 84 Stat. 1936, Pub. L. 91-650, title V, § 501(2).)

Prior Codifications. — 1981 Ed., § 36-223. 1973 Ed., § 36-433.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-801.

Editor's notes. — Repeal of chapter: See Historical and Statutory Notes following § 32-801.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (283) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Analysis

In general.
Power of Congress.
Reasonableness of regulations.

In general.

Defense of assumption of risk is available to bar a claim based upon breach of a duty imposed by a statutory safety scheme only where defendant bears burden of proving that there was available to wage earner an alternative to encounter the risk, that wage earner's choice between risk and such alternative was fully voluntary, that such alternative afforded wage earner the safety mandated by statute, rule, or regulation and that wage earner's determination to encounter risk was, under circumstances, made with willful, wanton, or reckless disregard for his own safety. D.C. Code § 36-431 et seq. Martin v. George Hyman Constr. Co., 395 A.2d 63, 1978 D.C. App. LEXIS 575 (1978).

The burden is on employer, charged with violation of District of Columbia Industrial Safety Board's Regulation, within its general authority, as to slope of cross grain in wood side rails of ladders, to demonstrate clearly that regulation is beyond board's delegated authority or so unreasonable as to be void. D.C. Code 1940, §§ 36-402 et seq., 36-433. Davis v. District of Columbia, 59 A.2d 208, 1948 D.C. App. LEXIS 149 (Cr.App. 1948).

A regulation of District of Columbia Industrial Safety Board that general slope of cross grain in side rails of portable ladders should not exceed one inch in fifteen inches was directed to employers using ladders in district rather than ladder manufacturers or retailers who might be located in any part of nation. D.C. Code 1940, §§ 36-402 et seq., 36-431, 36-433. Davis v. District of Columbia, 59 A.2d 208, 1948 D.C. App. LEXIS 149 (Cr.App. 1948).

Power of Congress.

Congress has power to impose on employer in District of Columbia duty to ascertain at his peril whether his equipment, used by employees, complies with set minimum safety stan-

dards. D.C. Code 1940, § 36-402 et seq. Davis v. District of Columbia, 59 A.2d 208, 1948 D.C. App. LEXIS 149 (Cr.App. 1948).

Reasonableness of regulations.

Unreasonableness of requirement in regulation of District of Columbia Industrial Safety Board as to ladders that wood used in side rails thereof be dried to not more than specified moisture content did not render entire regulation, including provision as to maximum general slope of cross grain in such rails, unreasonable. D.C. Code 1940, §§ 36-402 et seq., 36-433. Davis v. District of Columbia, 59 A.2d 208, 1948 D.C. App. LEXIS 149 (Cr.App. 1948).

Unreasonableness of one part of administrative board's regulation or of statute does not invalidate reasonable portions thereof. Davis v. District of Columbia, 59 A.2d 208, 1948 D.C. App. LEXIS 149 (Cr.App. 1948).

A regulation of District of Columbia Industrial Safety Board that general slope of cross grain in wood side rails of portable ladders built to minimum dimensions should not exceed one inch in fifteen inches was not unreasonable, either in general or as applied to employer using or causing his employees to use a ladder having greater slope of grain. D.C. Code 1940, §§ 36-402 et seq., 36-433. Davis v. District of Columbia, 59 A.2d 208, 1948 D.C. App. LEXIS 149 (Cr.App. 1948).

§ 32-804. Council to make rules and regulations; public hearing.

Before any rules or regulations of the Council of the District of Columbia shall become effective a public hearing shall be held by the Council for the purpose of investigating reasonable standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of employment, and any person interested in the matter being investigated may appear and testify. If, after investigation, the Council is of the opinion that minimum standards of safety requirements are necessary to protect or safeguard the lives or health of employees covered by this subchapter, it may adopt and promulgate such rules and regulations as it may deem advisable, which shall become effective 30 days after publication of notice at least once in a newspaper of general circulation in the District of Columbia that they have been adopted and copies are available to the public at the Office of the Mayor of the District of Columbia.

(Sept. 19, 1918, ch. 174, title II, § 4; Oct. 14, 1941, 55 Stat. 738, ch. 438,§ 4; June 14, 1944, 58 Stat. 279, ch. 258.)

Prior Codifications. — 1981 Ed., § 36-224. 1973 Ed., § 36-434.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 36-221.

Editor's notes. — Repeal of subchapter: See Historical and Statutory Notes following § 36-221.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (284) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 32-805. Board authorized to take testimony and issue subpoenas.

Any member of the Board shall have power to administer oaths and the Board may require by subpoena the attendance and testimony of witnesses, the production of all books, registers, and other evidence relative to any matters under investigation, at any public hearing, or at any session or any conference held by the Board. In case of disobedience to a subpoena the Board may invoke the Superior Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence. In the case of contumacy or refusal to obey a subpoena, the Court may issue an order requiring appearance before the Board, the production of documentary evidence and the giving of evidence touching the matter in question, and any failure to obey such order of the Court may be punished by such Court as a contempt thereof.

(Sept. 19, 1918, ch. 174, title II, § 5; Oct. 14, 1941, 55 Stat. 738, ch. 438,§ 3; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I,§ 155(c)(38).)

Prior Codifications. — 1981 Ed., § 36-225. 1973 Ed., § 36-435.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-801.

Editor's notes. — Repeal of chapter: See Historical and Statutory Notes following § 32-801.

§ 32-806. Variations from rules or regulations; public hearing.

The Board may, upon written application of any employer affected by such rule or regulation, permit variations from any provisions thereof if it shall find that the application of such provision would result in unnecessary hardship or practical difficulty, and notwithstanding such variance, that the protection afforded by such rule or regulation will be provided. The Board may grant a hearing open to the public on such application upon request of the applicant or other interested party or parties, or on its own initiative. The Board's decision thereon shall be subject to review by the District of Columbia Court of Appeals upon petition of the applicant or other affected party or parties. The Board shall keep a properly indexed record of all variations permitted from any rule or regulation, which shall be open to public inspection.

(Sept. 19, 1918, ch. 174, title II, § 6; Oct. 14, 1941, 55 Stat. 738, ch. 438,§ 3; Jan. 5, 1971, 84 Stat. 1936, Pub. L. 91-650, title V, § 501(3).)

Prior Codifications. — 1981 Ed., § 36-226. 1973 Ed., § 36-436.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-801.

Editor's notes. — Repeal of chapter: See Historical and Statutory Notes following § 32-801.

§ 32-807. Director of Industrial Safety.

The Board is hereby authorized to employ a Director of Industrial Safety, who shall not be a member of the Board. The Director shall perform such duties as may be prescribed by the Board in administering the provisions of this subchapter.

(Sept. 19, 1918, ch. 174, title II, § 7; Oct. 14, 1941, 55 Stat. 738, ch. 438,§ 3; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); Mar. 3, 1979, D.C. Law 2-139, § 3205(k), 25 DCR 5740.)

Cross references. — Effective date provisions, see § 1-636.02.

Prior Codifications. — 1981 Ed., § 36-227. 1973 Ed., § 36-437.

Legislative history of Law 2-139. — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978," was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-801.

Editor's notes. — Repeal of chapter: See Historical and Statutory Notes following § 32-801.

§ 32-808. Employer to furnish safe place of employment, information required by Board, report of employees' injury or death, and record of employees.

(a) Every employer shall furnish a place of employment which shall be reasonably safe for employees, shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably safe and adequate to render such employment and place of employment reasonably safe.

(b) Every employer shall furnish to the Board any information which the Board is authorized to require and shall make true and specific answers to all questions.

(c) Every employer shall submit to the Board within 10 days from the date of any injury or death, or from the date that the employer has knowledge of any disease or infection resulting from any injury, a duplicate copy of the report provided for in § 930 of Title 33, United States Code, as made applicable to the District of Columbia by §§ 36-501 and 36-502 [1973 Ed.].

(d) Every employer shall keep an accurate record of every person employed by him so as to be able in case of accident immediately to give an accurate record relative to same.

(Sept. 19, 1918, ch. 174, title II, § 8; Oct. 14, 1941, 55 Stat. 738, ch. 438,§ 3.)

Cross references. — Submission of duplicate report to mayor, see § 32-1113.

Prior Codifications. — 1981 Ed., § 36-228. 1973 Ed., § 36-438.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-801.

References in text. — The references to §§ 36-501 and 36-502, at the end of subsection (c) of this section, are references to those sec-

tions as they appeared in the 1973 Edition of the D.C. Code. Chapter 5 of Title 36 1973 Ed. was revised by the Act of July 1, 1980, D.C. Law 3-77. D.C. Law 3-77 repealed §§ 36-501 and 36-502 as they appeared in the 1973 Edition of the D.C. Code. Therefore the reference to these sections is no longer relevant.

Editor's notes. — Repeal of chapter: See Historical and Statutory Notes following § 32-801.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Construction with other laws.
Control of employee or workplace.
Defenses.
Duty of due care.
Jury instructions.
Subcontractor's employees.

Admissibility of evidence.

Evidence that general contractor violated federal and District of Columbia regulations directed to employer-employee relationship by failure to construct landing at base of stairwell, to ensure sufficient lighting, and to place barricades in front of unfinished stairwell was relevant and admissible to whether general contractor breached duty to employment applicant and was negligent. Occupational Safety and Health Act of 1970, §§ 2-33, 29 U.S.C. §§ 651-678; D.C. Code 1981, §§ 36-221 to 36-232. Jeffries v. Potomac Dev. Corp., 822 F.2d 87, 1987 U.S. App. LEXIS 8158 (C.A.D.C. 1987).

Construction with other laws.

Duty imposed by Industrial Safety Act on electric utility to provide safe place of employment for contractor's employee removing asbestos covering from energized underground cables had not been preempted by Occupational Safety and Health Act (OSHA); while OSHA standards specifically addressing employee safety in regard to work with and around electrical circuits, as well as in manholes, were in effect at time of employee's accident, no regulation adopted at the time or since suggested congressional intent to preempt general duty of care imposed by Act. Occupational Safety and Health Act of 1970, §§ 2 et seq., 4(b((3), 6, 29 U.S.C. §§ 653(b)(4), 655; D.C. Code 1981, § 36-228(a); 29 C.F.R. §§ 1926.416(a)(1, 3), 1926.950(c)(1), 1926.956(b)(1). Traudt v. Potomac Elec. Power Co., 692 A.2d 1326, 1997 D.C. App. LEXIS 4 (1997).

Occupational Safety and Health Act of 1970 did not preempt employee injury reporting requirements of D.C. Industrial Safety Act, since the OSHA preemption subsections applied only to standards promulgated by rule and reporting was not considered a standard. D.C. Code § 36-438(c); Occupational Safety and Health Act of 1970, §§ 6, 18, 29 U.S.C. §§ 655, 667. P & Z Co. v. District of Columbia, 408 A.2d 1249, 1979 D.C. App. LEXIS 509 (1979).

Where Occupational Safety and Health Act expressly stated congressional desire not to supersede or in any manner affect preexisting duties of employers under antecedent congressional enactments and section of such act listing acts explicitly superseded did not mention D.C. Industrial Safety Act and where Congress amended the D.C. Industrial Safety Act after enactment of OSHA, enactment of OSHA was not intended to repeal by implication D.C. statute; rather, Congress intended the two statutes to coexist. D.C. Code § 36-438(c); Occupational Safety and Health Act of 1970, §§ 4(b)(2, 4), 6, 18, 29 U.S.C. §§ 653(b)(2, 4), 655, 667. P & Z Co. v. District of Columbia, 408 A.2d 1249, 1979 D.C. App. LEXIS 509 (1979).

Control of employee or workplace.

Industrial Safety Act creates a statutory duty when an entity has control or custody over the place of employment or over any employee, and this statutory duty of care is broader than its common law counterpart because it is incumbent not only upon employers as defined at common law, but also employers defined by the statute. Velasquez v. Essex Condo. Ass'n, 759 A.2d 676, 2000 D.C. App. LEXIS 225 (2000).

Coverage under Industrial Safety Act does not depend upon a particular degree of control or supervision exercised by the employer over the wage earner or work performed, if alternatively the employer has control of the worksite. Velasquez v. Essex Condo. Ass'n, 759 A.2d 676, 2000 D.C. App. LEXIS 225 (2000).

Condominium owner and its property manager were "employers" under Industrial Safety Act, but such status did not make them liable for independent contractor's employee's fall from scaffolding; no one from owner actually worked on site or supervised any of independent contractor's work, neither owner nor manager actually instructed or otherwise controlled contractor's employees in relation to renovation project, contractor owned and erected scaffolding, and no one from owner or manager had access to the scaffolding from which employee fell. Velasquez v. Essex Condo. Ass'n, 759 A.2d 676, 2000 D.C. App. LEXIS 225 (2000).

Condominium association's ownership of building where the work was performed and the authority it reserved in the contract to monitor independent contractor's work, to promulgate rules and regulations to which independent contractor and its employees were

bound, and to inspect independent contractor's equipment made condominium association the "employer" of independent contractor's employee under the Industrial Safety Act for purposes of action brought by employee, who was injured in fall from scaffolding. Velasquez v. Essex Condo. Ass'n, 759 A.2d 676, 2000 D.C. App. LEXIS 225 (2000).

Control of any employee or of place of employment is enough to impose statutory duty to provide safe place of employment under Industrial Safety Act. D.C. Code 1981, § 36-228(a). Traudt v. Potomac Elec. Power Co., 692 A.2d 1326, 1997 D.C. App. LEXIS 4 (1997).

Electric utility's ownership of manhole system and electric cables, together with authority it reserved in its contract with asbestos abatement contractor to monitor contractor's work and perform other work simultaneously at job site, established its control of place of employment sufficient to make it employer of contractor's employee for purposes of Industrial Safety Act duty to provide safe place of employment. D.C. Code 1981, § 36-228(a). Traudt v. Potomac Elec. Power Co., 692 A.2d 1326, 1997 D.C. App. LEXIS 4 (1997).

Electric utility's duty under Industrial Safety Act to provide asbestos abatement contractor's employee with safe place of employment was limited to those elements of workplace over which utility had control or custody. D.C. Code 1981, § 36-228(a). Traudt v. Potomac Elec. Power Co., 692 A.2d 1326, 1997 D.C. App. LEXIS 4 (1997).

Defenses.

Assertion of contributory negligence defense was precluded as to alleged breach of electric utility's duty under Industrial Safety Act to provide safe place of employment. D.C. Code 1981, § 36-228(a). Traudt v. Potomac Elec. Power Co., 692 A.2d 1326, 1997 D.C. App. LEXIS 4 (1997).

Contributory negligence of a wage earner does not bar recovery based upon an employer's breach of the statutory duty to provide reasonably safe working conditions for wage earners; it is immaterial whether the duty derives from the general language of statute or from provisions of a rule or regulation adopted pursuant to statute; however, unavailability of defense of contributory negligence does not mean that wage earner's conduct is irrelevant under all circumstances and where wage earner's conduct exceeds ordinary contributory negligence and constitutes that aggravated form of negligence, approaching intent, wage earner will be barred from recovering. D.C. Code §§ 36-433, 36-438(a). Martin v. George Hyman Constr. Co., 395 A.2d 63, 1978 D.C. App. LEXIS 575 (1978).

Defense of assumption of risk is available to bar a claim based upon breach of a duty imposed by a statutory safety scheme only where defendant bears burden of proving that there was available to wage earner an alternative to encounter the risk, that wage earner's choice between risk and such alternative was fully voluntary, that such alternative afforded wage earner the safety mandated by statute, rule, or regulation and that wage earner's determination to encounter risk was, under circumstances, made with willful, wanton, or reckless disregard for his own safety. D.C. Code § 36-431 et seq. Martin v. George Hyman Constr. Co., 395 A.2d 63, 1978 D.C. App. LEXIS 575 (1978).

Duty of due care.

Industrial Safety Act is not a strict liability statute; rather, the Act imposes a statutory duty of due care. Velasquez v. Essex Condo. Ass'n, 759 A.2d 676, 2000 D.C. App. LEXIS 225 (2000).

Once a duty is established under the Industrial Safety Act, i.e., that an entity is a covered employer, and that the injured party comes within the protection of the statute, it is still necessary to determine the scope of the duty of due care under the statute and the reasonableness of defendant's actions. Velasquez v. Essex Condo. Ass'n, 759 A.2d 676, 2000 D.C. App. LEXIS 225 (2000).

Consultant hired by owner of building to oversee construction project at building was not "employer," and therefore statutory duty to provide a safe workplace under the Industrial Safety Act (ISA) was not triggered, where, although contract required consultant to monitor and report on various safety violations, consultant did not have authority to rectify safety violations, but rather contract required consultant to report violations to general contractor in order to have them rectified. Presley v. Commer. Moving & Rigging, Inc., 25 A.3d 873, 2011 D.C. App. LEXIS 437 (2011).

Jury instructions.

If a party charged with statutory or regulatory negligence produces competent evidence tending to explain or excuse his or her violation of the statutory or regulatory standard, the jury is properly instructed, upon proper request, that the violation is evidence of negligence, but not negligence as a matter of law. D.C. Code 1973, § 36-438(a). Ceco Corp. v. Coleman, 441 A.2d 940, 1982 D.C. App. LEXIS 277 (1982).

Subcontractor's employees.

General contractor owes subcontractor's employee a duty to provide reasonably safe conditions of employment. D.C. Code 1981, § 36-221 et seq. Fry v. Diamond Constr., 659 A.2d 241, 1995 D.C. App. LEXIS 108 (1995).

§ 32-809. Authority to examine place of employment.

The Board, or any officer or employee acting under its authority, shall have the authority, at any reasonable time, to enter any place where an employment covered by this subchapter is being carried on, and to examine any structure, tool, appliance, machinery, or process used in or connected with such employment. No employer or other persons shall refuse to admit any member of the Board or its authorized representative to any such place or to permit any such examination.

(Sept. 19, 1918, ch. 174, title II, § 9; Oct. 14, 1941, 55 Stat. 738, ch. 438,§ 3.)

Prior Codifications. — 1981 Ed., § 36-229. 1973 Ed., § 36-439.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-801.

Editor's notes. — Repeal of chapter: See Historical and Statutory Notes following § 32-801.

§ 32-810. Mayor to furnish office space and supplies.

The Mayor of the District of Columbia shall furnish the Board with such office space, furniture and equipment, stationery, books, books of reference, and other supplies as are necessary for the discharge of its duties under this subchapter.

(Sept. 19, 1918, ch. 174, title II, § 10; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

Prior Codifications. — 1981 Ed., § 36-230. 1973 Ed., § 36-440.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-801.

Editor's notes. — Repeal of chapter: See Historical and Statutory Notes following § 32-801.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 32-811. Annual report to Mayor.

The Board shall annually, on or before the 1st day of July, file with the Mayor of the District of Columbia a report covering its activities under this subchapter.

(Sept. 19, 1918, ch. 174, title II, § 11; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

Prior Codifications. — 1981 Ed., § 36-231. 1973 Ed., § 36-441.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-801.

Editor's notes. — Repeal of chapter: See Historical and Statutory Notes following § 32-801.

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powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 32-812. Penalties for violation of subchapter; jurisdiction; prosecution.

Whoever violates any of the provisions of this subchapter, or any rules or regulations promulgated hereunder, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than $100 or more than $600, or by imprisonment of not exceeding 90 days. Prosecutions for violations of this subchapter shall be in the name of the District of Columbia on information filed in the Superior Court of the District of Columbia by the Corporation Counsel or one of his assistants.

(Sept. 19, 1918, ch. 174, title II, § 12; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Jan. 5, 1971, 84 Stat. 1936, Pub. L. 91-650, title V, § 501(4).)

Prior Codifications. — 1981 Ed., § 36-232. 1973 Ed., § 36-442.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-801.

Editor's notes. — Repeal of chapter: See Historical and Statutory Notes following § 32-801.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Indictment or information.
Intent or knowledge.
Presumptions and burden of proof.
Review.

Admissibility of evidence.

One who had been an inspector for industrial safety board of District of Columbia for over five years, had previously been employed as carpenter, iron worker and rigger for large construction company for over thirty years, and was member of carpenters' and iron workers' unions, was qualified to testify that side rail of ladder showed cross grain of one inch in five inches in violation of board's regulation that slope of cross grain should not exceed one inch in fifteen inches. D.C. Code 1940, §§ 36-402 et seq., 36-433. Davis v. District of Columbia, 59 A.2d 208, 1948 D.C. App. LEXIS 149 (Cr.App. 1948).

Indictment or information.

Failure to charge in information that there was, at time defendant permitted operation of self-propelled loaders in absence of canopy over driver, danger of falling objects and failure to permit defendant's attorney to question driver concerning whether such danger then existed were harmless errors, where construction safety regulation of District of Columbia required canopy on loader under conditions existing at time safety inspector observed construction project, reverse signal alarm on the loader was inoperative in violation of another regulation and inspector viewed the project for 15 minutes before going into excavation site to announce the violations. Hutchison Bros. Exca-

vation Co. v. District of Columbia, 278 A.2d 318, 1971 D.C. App. LEXIS 333 (1971).

Intent or knowledge.

In view of fact that Congress used no words bearing on specific intent in penalty provision of statute governing industrial safety of wage earners, government was not required to prove that excavation corporation, charged with violating District of Columbia construction safety regulations requiring self-propelled equipment to be equipped with reverse signal alarm and requiring overhead protection to be provided for operator when equipment is used when falling or flying objects are a hazard, knew of such violations. D.C. Code § 36-442. Hutchison Bros. Excavation Co. v. District of Columbia, 278 A.2d 318, 1971 D.C. App. LEXIS 333 (1971).

District of Columbia construction safety regulation requiring hard hats to be provided for and used by all employees on construction projects would be construed as requiring conviction only if employer knew or reasonably should have known employee was not wearing issued hard hat and did nothing to correct situation. Hutchison Bros. Excavation Co. v. District of Columbia, 278 A.2d 318, 1971 D.C. App. LEXIS 333 (1971).

Presumptions and burden of proof.

The burden is on employer, charged with violation of District of Columbia Industrial Safety Board's Regulation, within its general authority, as to slope of cross grain in wood side rails of ladders, to demonstrate clearly that regulation is beyond board's delegated authority or so unreasonable as to be void. D.C. Code 1940, §§ 36-402 et seq., 36-433. Davis v. District of Columbia, 59 A.2d 208, 1948 D.C. App. LEXIS 149 (Cr.App. 1948).

Review.

Appeal from conviction of corporation for violating District of Columbia construction safety standards, rules and regulations would not be dismissed as moot on ground fines had been paid, where employee, who was not an officer of corporation but who was present at trial, was required by court to pay fines on day trial ended. Hutchison Bros. Excavation Co. v. District of Columbia, 278 A.2d 318, 1971 D.C. App. LEXIS 333 (1971).

Subchapter II. Seats for Employees.

§ 32-831. Employers to furnish seats for employees. [Repealed].

Repealed.

(Mar. 2, 1895, 28 Stat. 964, ch. 192, § 1; Oct. 1, 1976, D.C. Law 1-87, § 37(a), 23 DCR 2544; Apr. 29, 2004, D.C. Law 15-154, § 9, 50 DCR 10996.)

Prior Codifications. — 1981 Ed., § 36-901. 1973 Ed., § 36-310.

Legislative history of Law 1-87. — Law 1-87, the "Anti-Sex Discriminatory Language Act," was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976 and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-154. — Law 15-154, the "Elimination of Outdated Crimes Amendment Act of 2003", was introduced in Council and assigned Bill No. 15-79, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on October 7, 2003, and November 4, 2003, respectively. Signed by the Mayor on November 25, 2003, it was assigned Act No. 15-255 and transmitted to both Houses of Congress for its review. D.C. Law 15-154 became effective on April 29, 2004.

§ 32-832. Penalty. [Repealed].

Repealed.

(Mar. 2, 1895, 28 Stat. 964, ch. 192, § 2; Oct. 1, 1976, D.C. Law 1-87, § 38, 23 DCR 2544; Apr. 29, 2004, D.C. Law 15-154, § 9, 50 DCR 10996.)

Prior Codifications. — 1981 Ed., § 36-902. 1973 Ed., § 36-311.

Legislative history of Law 1-87. — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 32-831.

Legislative history of Law 15-154. — For Law 15-154, see notes following § 32-831.

CHAPTER 8A. LABOR PEACE AGREEMENTS FOR HOTEL DEVELOPMENT PROJECTS.

Sec.
32-851. Findings and declarations.
32-852. Determination of need for labor peace agreement.
32-853. Contents of labor peace agreement.
32-854. Exceptions.
32-855. Limitations.
32-856. Requirement of District notice.

§ 32-851. Findings and declarations.

(a) In the course of managing real property that it owns or in otherwise carrying out its functions in the public interest, the District may participate in real property developments as a property owner, lessor, proprietor, lender, or guarantor, facing similar risks and liabilities as other business entities participating in such ventures. As a result, the District has an ongoing proprietary interest in these developments and a direct interest in their financial performance.

(b) The District must make prudent management decisions, similar to any private business entity, to ensure efficient management of its business concerns and to maximize benefits and minimize risks. One risk is the possibility of labor-management conflict.

(c) A major potential outcome of labor-management conflict is economic action by labor unions against employers. Experience of municipal and other investors demonstrates, for example, that organizing drives pursuant to the formal and adversarial union certification process often deteriorate into protracted and acrimonious labor-management conflict. Labor-management conflict can result in construction delays, work stoppages, picketing, strikes, consumer boycotts, and other forms of adverse economic pressure. Such conflict may adversely affect the District's financial or other proprietary business interests by causing delay in the completion of a project, reducing the revenues or increasing the costs of the project, and by generating negative publicity.

(d) These risks are heightened in the hotel industry because this industry is so closely related to tourism, which is a linchpin of the District economy. Labor-management conflict in hotel projects in which the District is an economic participant can jeopardize the operation of related tourist and commercial facilities, as well as the District's national reputation as a tourist and convention destination.

(e) One method of reducing the risk to the District's proprietary interests is to require, as a condition of the District's investment or other economic participation in a development project, that employers taking part in the development project seek agreements with labor organizations in which the labor organizations agree to forbear from adverse economic action against the employers' operations.

(Apr. 2, 2003, D.C. Law 14-266, § 2, 50 DCR 412.)

Legislative history of Law 14-266. — Law 14-266, the "Hotel Development Projects Labor Peace Agreement Act of 2002", was introduced in Council and assigned Bill No. 14-7, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 7, 2003, it was assigned Act No. 14-577 and transmitted to both Houses of Congress for its review. D.C. Law 14-266 became effective on April 2, 2003.

§ 32-852. Determination of need for labor peace agreement.

(a) For each hotel development project in which the District participates or has a financial interest, the Mayor shall determine whether the District of Columbia has a proprietary interest in the development project. The District shall be deemed to have a proprietary interest in the development project where the Mayor determines that the District of Columbia:

(1) Through a lease of real property that is owned by the District of Columbia and used for the development project, receives ongoing revenue, excluding government fees, tax revenue, or assessment revenue, or similar fees and revenues, except for tax revenue under the circumstances specified in paragraphs (2) and (3) of this subsection;

(2) Receives ongoing revenue from the project to repay loans provided by the District to assist in the development of the project, including incremental tax revenues generated by the project;

(3) Receives ongoing revenue from the project to pay debt service on bonds provided by the District to assist in the development of the project, including incremental tax revenues generated by the project;

(4) Has significant assets at risk because it has agreed to underwrite or guarantee the development of the project or loans related to the project; or

(5) Has a significant ongoing economic and nonregulatory interest at risk in the financial success of a project which is likely to be adversely affected by labor-management conflict, except that no interest shall be considered economic and nonregulatory if it arises from the exercise of regulatory or police powers such as taxation (except as set forth in paragraphs (2) and (3) of this subsection), zoning, or the issuance of permits or licenses.

(b)(1) If the Mayor determines that the District has a proprietary interest at risk in a hotel development project, a District contract related to that project shall include a provision requiring any employer on the project to enter into a labor peace agreement with a labor organization that requests a labor peace agreement and which represents, or reasonably might represent, workers on the project, as essential consideration for the District entering into the contract.

(2) For the purposes of this subsection:

(A) "Contract" means a lease, management agreement, service agreement, loan, bond, guarantee, or other similar agreement to which the District is a party and in which the District has a proprietary interest;

(B) "Employer" means any person, corporation, company, association, limited or general partnership, joint venture, contractor, subcontractor, or other entity that employs individuals at the site of a development project and whose ongoing economic performance and potential for labor-management

conflict at the site may substantially affect the District's proprietary interest; provided, that the term "employer" shall not include the United States, the District of Columbia, a wholly owned government corporation, a Federal Reserve Bank, or a state or other political subdivision;

(C) "Labor organization" means an organization of any kind, or an agency or employer representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(Apr. 2, 2003, D.C. Law 14-266, § 3, 50 DCR 412.)

Legislative history of Law 14-266. — For Law 14-266, see notes following § 32-851.

§ 32-853. Contents of labor peace agreement.

(a) The labor peace agreement shall be a written agreement between the employer and the labor organization that contains, at a minimum, a provision prohibiting the labor organization and its members from engaging in any picketing, work stoppage, boycott, or other economic interference with the employer's operations in which the District has a proprietary interest, for the duration of the interest.

(b) The labor peace agreement shall be enforceable under section 301(a) of the Labor Management Relations Act of 1947, approved July 23, 1947 (61 Stat. 156; [29 U.S.C. § 185(a)]) or through any other relief provided by law, including administrative and judicial relief, after the best efforts of the parties at resolving a dispute have failed.

(c) The employer and labor organization may incorporate additional provisions in the labor peace agreement to protect the District's proprietary interest.

(d) An employer that performs its obligations under a labor peace agreement will be relieved of further obligation to abide by the procedures in the agreement, if the labor organization engages in adverse economic action such as striking, picketing, or boycotting the employer.

(Apr. 2, 2003, D.C. Law 14-266, § 4, 50 DCR 412.)

Legislative history of Law 14-266. — For Law 14-266, see notes following § 32-851.

§ 32-854. Exceptions.

The requirements to enter into a labor peace agreement shall not apply to:

(1) An employer employing fewer than the equivalent of 15 full-time or part-time employees at the development project;

(2) An employer who is a signatory to a valid and binding collective bargaining agreement or agreements covering the terms and conditions of employment for all of its employees at that development project or who has entered into an agreement or agreements with one or more labor organizations

regarding such employees, and the agreement provides at least equal protection from the risks of labor-management conflict as provided by the minimum terms of a labor peace agreement;

(3) A development project where the Mayor determines that the risk to the District's financial or other nonregulatory interests resulting from labor-management conflict is so minimal or speculative as not to warrant concern for the District's investment or other nonregulatory interests;

(4) A development project that receives less than $1 million dollars of the total cost of the project from the District;

(5) A residential development project;

(6) A multi-tenanted development project that is built on a speculative basis;

(7) A development project that receives only conduit bond financing from the District; or

(8) A development project involving a historically designated building.

(Apr. 2, 2003, D.C. Law 14-266, § 5, 50 DCR 412; Mar. 2, 2007, D.C. Law 16-191, § 135, 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191 validated previously made technical corrections in the designations of pars. (1) to (8).

Legislative history of Law 14-266. — For Law 14-266, see notes following § 32-851.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 32-242.

§ 32-855. Limitations.

(a) Nothing in this chapter requires an employer to recognize a particular labor organization.

(b) Nothing in this chapter requires an employer to enter into a collective bargaining agreement establishing the substantive terms and conditions of employment.

(c) This chapter is not intended to, and shall not be interpreted to, enact or express any generally applicable policy regarding labor-management relations or to regulate those relations in any way.

(d) This chapter is not intended to favor any particular outcome in the determination of employee preference regarding union representation.

(e) Nothing in this chapter permits or requires the District or any employer to enter into any agreement in violation of the National Labor Relations Act of 1935, approved July 5, 1935 (49 Stat. 449; 29 U.S.C. § 151 et seq.).

(Apr. 2, 2003, D.C. Law 14-266, § 6, 50 DCR 412.)

Legislative history of Law 14-266. — For Law 14-266, see notes following § 32-851.

§ 32-856. Requirement of District notice.

A request for proposals or invitation to bid or similar document regarding a District development project covered by this chapter shall include a summary description of and reference to the requirements of this chapter. Failure to

include a description or reference to this chapter in the document shall not exempt an employer otherwise subject to the requirements of this chapter.

(Apr. 2, 2003, D.C. Law 14-266, § 7, 50 DCR 412.)

Legislative history of Law 14-266. — For Law 14-266, see notes following § 32-851.

CHAPTER 9. LIE DETECTORS.

Sec.
32-901. Definitions.
32-902. Use prohibited; exceptions.
32-903. Invasion of privacy; contracts and arbitration decisions; criminal penalties and civil liability.

§ 32-901. Definitions.

As used in this chapter, the term:

(1) "Employee" means any natural person who performs any labor for compensation, in whole or in part, in the District of Columbia; but does not include:

(A) Employees of any authority of the government of the United States other than the District of Columbia government;

(B) Employees of any foreign government; or

(C) Employees of any international organization defined in 22 U.S.C. § 288.

(2) "Employer" means anyone who employs any natural person and who does business in the District of Columbia, but does not include any agency or authority of the federal government.

(3) "Hiring procedure" means any procedure or action in the District of Columbia used to find, or to select for employment, any person seeking employment, whether the procedure is used by a prospective employer with all persons seeking employment, or is used only selectively with such persons.

(4) "Lie detector test" means any polygraph, lie detector, or other test which by any mechanical, electrical, chemical, or physiological means attempts to determine whether a person is telling the truth, or the truth to the best of the person's knowledge.

(Mar. 6, 1979, D.C. Law 2-154, § 2, 25 DCR 6980.)

Prior Codifications. — 1981 Ed., § 36-801. 1973 Ed., § 36-901.

Legislative history of Law 2-154. — Law 2-154, the "Prevention of the Administration of Lie Detection Procedures Act of 1978," was introduced in Council and assigned Bill No. 2-225, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 28, 1978, and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-320 and transmitted to both Houses of Congress for its review.

§ 32-902. Use prohibited; exceptions.

(a) No employer or prospective employer shall administer, accept or use the results of any lie detector test in connection with the employment, application or consideration of an individual, or have administered, inside the District of Columbia, any lie detector test to any employee, or, in or during any hiring procedure, to any person whose employment, as contemplated at the time of administration of the test, would take place in whole or in part in the District of Columbia.

(b) The provisions of this section shall not apply to any criminal or internal disciplinary investigation, or pre-employment investigation conducted by the

Metropolitan Police, the Fire Department, and the Department of Corrections; provided that any information received from a lie detector test which renders an applicant ineligible for employment shall be verified through other information and no person may be denied employment based solely on the results of a pre-employment lie detector test.

(Mar. 6, 1979, D.C. Law 2-154, § 3, 25 DCR 6980; Sept. 22, 1994, D.C. Law 10-175, § 2, 41 DCR 5173; Mar. 16, 1995, D.C. Law 10-215, § 2, 41 DCR 8036.)

Section references. — This section is referred to in § 32-903.

Prior Codifications. — 1981 Ed., § 36-802. 1973 Ed., § 36-902.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Lie Detector Tests for Pre-Employment Investigations Temporary Amendment Act of 1994 (D.C. Law 10-175, September 22, 1994, law notification 42 DCR 6705).

Legislative history of Law 2-154. — For legislative history of D.C. Law 2-154, see Historical and Statutory Notes following § 32-901.

Legislative history of Law 10-215. — Law 10-215, the "Lie Detector Tests for Pre-Employment Investigations Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-693, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1995, it was assigned Act No. 10-352 and transmitted to both Houses of Congress for its review. D.C. Law 10-215 became effective on March 16, 1995.

§ 32-903. Invasion of privacy; contracts and arbitration decisions; criminal penalties and civil liability.

(a) Any administration of a lie detector test to any employee or person seeking employment, in violation of § 32-902, shall be an unwarranted invasion of privacy in the District of Columbia, and shall be compensable by damages for tortious injury.

(b) No contract or arbitration decision shall contain any provision in violation of § 32-902.

(c) Any employer who violates the provisions of § 32-902 shall be guilty of a misdemeanor and subject to a fine of $500, or 30 days in jail, or both, upon conviction.

(d) Any employer who violates the provisions of this chapter shall be civilly liable to the person whom he or she required to take a polygraph or similar examination, and the amount of damages shall be established by the court, plus reasonable attorney's fees. Remedies available under subsection (c) of this section and this subsection shall be deemed alternative or joint relief, and not subject to waiver by the exercise of the other.

(Mar. 6, 1979, D.C. Law 2-154, § 4, 25 DCR 6980.)

Prior Codifications. — 1981 Ed., § 36-803. 1973 Ed., § 36-903.

Legislative history of Law 2-154. — For legislative history of D.C. Law 2-154, see Historical and Statutory Notes following § 32-901.

CHAPTER 10. MINIMUM WAGES.

Subchapter I. General

Sec.
32-1001. Findings and declaration of policy.
32-1002. Definitions.
32-1003. Requirements.
32-1004. Exceptions.
32-1005. Authority of Mayor.
32-1006. Regulatory powers of Mayor.
32-1007. Investigatory powers of Mayor.
32-1008. Duties of employers; open records.
32-1009. Posting of act and regulations on premises; distribution of copies to employers.
32-1010. Violations.
32-1011. Penalties; prosecution.
32-1012. Civil liability.
32-1013. Limitations.
32-1014. Collective bargaining.
32-1015. Application to revised wage orders.

Subchapter II. Repealed Provisions

32-1031 to 32-1049. [Repealed].

Subchapter I. General.

§ 32-1001. Findings and declaration of policy.

(a) The Council of the District of Columbia finds that persons employed in the District of Columbia should be paid at wages sufficient to provide adequate maintenance and to protect health. Any wage that is not sufficient to provide adequate maintenance and to protect health impairs the health, efficiency, and well-being of persons so employed, constitutes unfair competition against other employers and their employees, threatens the stability of industry, reduces the purchasing power of employees, and requires, in many instances, that their wages be supplemented by the payment of public moneys for relief or other public and private assistance. Employment of persons at these insufficient rates of pay threatens the health and well-being of the people of the District of Columbia and injures the overall economy.

(b) It is declared the policy of this subchapter to ensure the elimination of the conditions referred to above.

(Mar. 25, 1993, D.C. Law 9-248, § 2, 40 DCR 761.)

Prior Codifications. — 1981 Ed., § 36-220.

Legislative history of Law 9-248. — Law 9-248, the "Minimum Wage Act Revision Act of 1992," was introduced in Council and assigned Bill No. 9-343, which was referred to the Committee on Labor. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-394 and transmitted to both Houses of Congress for its review. D.C. Law 9-248 became effective on March 25, 1993.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 9-248, the "District of Columbia Minimum Wage Act Revision Act of 1992", see Mayor's Order 93-114, July 27, 1993.

Editor's notes. — Mayor authorized to issue rules: Section 17 of D.C. Law 9-248 provided that the Mayor shall issue rules necessary to carry out the provisions of the act pursuant to (subchapter I of Chapter 5 of Title 2, 2001 Ed.).

CASE NOTES

In general.

Employee would not be granted leave to amend complaint to change statutory basis of her claim for unpaid commissions to District of Columbia Wage Payment and Collection Law rather than its Wage and Hour Law; amendment would be futile because employer's timely payment of final paycheck and reimbursement for unused vacation relieved it of statutory liability. Fudali v. Pivotal Corp., 310 F.Supp.2d 22, 2004 U.S. Dist. LEXIS 4749 (2004).

Employee's discharge, which resulted from

his alleged theft of employer's property, did not fall within the scope of the District of Columbia's public policy exception to the at-will doctrine. Sokos v. Hilton Hotels Corp., 283 F.Supp.2d 42, 2003 U.S. Dist. LEXIS 16914 (2003).

Employee who alleged that he was fired because he notified superiors that he believed employer was in violation of minimum wage law of the District of Columbia could not invoke narrow exception to at-will doctrine, absent evidence of an outright refusal to violate a specific law, with employer putting employee to choice of breaking the law or losing his job. D.C. Code 1981, § 36-220 et seq. Thigpen v. Greenpeace, Inc., 657 A.2d 770, 1995 D.C. App. LEXIS 90 (1995).

§ 32-1002. Definitions.

For the purposes of this subchapter:

(1) The term "employ" includes to suffer or permit to work.

(2) The term "employee" includes any individual employed by an employer, except that this term shall not include:

(A) Any individual who, without payment and without expectation of any gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable, religious, or nonprofit organization;

(B) Any lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions; or

(C) Any individual employed as a casual babysitter, in or about the residence of the employer.

(3) The term "employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States or the District of Columbia.

(4) The term "gratuities" means voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered.

(5) The term "Mayor" means the Mayor of the District of Columbia or the Mayor's designated agent or representative, including the Department of Employment Services.

(6) The term "occupation" means any occupation, service, trade, business, industry, or branch or group of occupations or industries, or employment or class of employment, in which employees are gainfully employed.

(6A) The term "office building" means any commercial property where the primary functions are the transaction of administrative, business, civic, or professional services, including properties where handling goods, wares, or merchandise, in limited quantities, is accessory to the primary occupancy or use. The term "office building" does not include libraries, museums, or universities.

(7) The term "regular rate" means all remuneration for employment paid to, or on behalf of, the employee, but shall not be considered to include the items set forth in the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 207(e)(1), (2), (3), (4), (5), (6), and (7). Extra compensation paid as described in § 207(e)(5), (6), and (7) shall be creditable toward overtime compensation.

(7A) The term "security officer" shall have the same meaning as provided in section 2100 of Title 17 of the District of Columbia Municipal Regulations.

(8) The term "wage" means compensation due to an employee by reason of the employee's employment, payable in legal tender of the United States or

checks on banks convertible into cash on demand at full face value, including allowances as may be permitted by any regulation issued under §§ 32-1003 and 32-1006.

(9) The term "Washington metropolitan region" means the area consisting of the District of Columbia, Montgomery, and Prince George's Counties in Maryland, Arlington and Fairfax Counties and the Cities of Alexandria, Fairfax and Falls Church in Virginia.

(10) The term "working time" means all the time the employee:

(A) Is required to be on the employer's premises, on duty, or at a prescribed place;

(B) Is permitted to work;

(C) Is required to travel in connection with the business of the employer; or

(D) Waits on the employer's premises for work.

Interpretations of what constitutes working time shall be made in accordance with Title 29 of the Code of Federal Regulations, Part 785, Hours Worked Under the Fair Labor Standards Act of 1938, as amended, except that references to interpretations of the Portal-to-Portal Act shall have no force and effect.

(Mar. 25, 1993, D.C. Law 9-248, § 3, 40 DCR 761; Mar. 20, 2008, D.C. Law 17-114, § 2(a), 55 DCR 1276.)

Prior Codifications. — 1981 Ed., § 36-220.1.

Effect of amendments. — D.C. Law 17-114 added pars. (6A) and (7A).

Legislative history of Law 9-248. — For legislative history of D.C. Law 9-248, see Historical and Statutory Notes following § 32-1001.

Legislative history of Law 17-114. — Law 17-114, the "Enhanced Professional Security Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-199 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on January 23, 2008, it was assigned Act No. 17-257 and transmitted to both Houses of Congress for its review. D.C. Law 17-114 became effective on March 20, 2008.

References in text. — The "Portal-to-Portal Act", referred to in (10), is 29 U.S.C. § 251 et seq.

CASE NOTES

ANALYSIS

Employer.
Tips.

Employer.

Restaurant Maitre d' was not "employer" within meaning of Fair Labor Standards Act (FLSA), and thus restaurant's inclusion of Maitre d' in tip pool did not invalidate restaurant's use of tip credit under FLSA or District of Columbia Minimum Wage Act (DCMWA); Maitre d' had no authority to hire, fire, or discipline employees without prior authorization, Maitre d' had little, if any, discretion in setting work schedule, Maitre d' was not involved in setting rate or method of payment to employees, and Maitre d' did not maintain employment records. Arencibia v. 2401 Rest. Corp., 831 F.Supp.2d 164, 2011 U.S. Dist. LEXIS 146979 (2010), appeal dismissed by 2012 U.S. App. LEXIS 17169 (D.C. Cir. Aug. 7, 2012).

Complaint sufficiently alleged that individual owner of architectural firm was statutory "employer" under either FLSA or District of Columbia Minimum Wage Act, of skilled metal finisher who was employed by the firm and allegedly fired in retaliation for reporting FLSA violations, and thus could be sued personally; name of corporation and name of owner were identical, owner assigned work to employee, owner paid bonus to employee, and owner personally fired employee. Del Villar v. Flynn Architectural Finishes, Inc., 664 F.Supp.2d 94, 2009 U.S. Dist. LEXIS 96471 (2009), dismissed

by 893 F. Supp. 2d 201, 2012 U.S. Dist. LEXIS 139828 (D.D.C. 2012).

Tips.

Restaurant adequately disclosed to employees its use of tip pool, in combination with tip credit, as required by Fair Labor Standards Act (FLSA) and District of Columbia Minimum Wage Act (DCMWA); contrary to employees' argument, minimum wage and tip credit notices posted by restaurant made no representations whatsoever as to treatment of tips, and noted only that if "any employee's tips" combined with hourly wage did not equal minimum wage, restaurant was required to make up difference, and tip pool was verbally explained at time of hire and from time to time during employment. Arencibia v. 2401 Rest. Corp., 831 F.Supp.2d 164, 2011 U.S. Dist. LEXIS 146979 (2010), appeal dismissed by 2012 U.S. App. LEXIS 17169 (D.C. Cir. Aug. 7, 2012).

Restaurant's director of sales and sommelier, whose tips and fees were paid out before restaurant's tip pool was calculated, were not participants in pool, for purposes of former restaurant employees' claims under Fair Labor Standards Act (FLSA) and District of Columbia Minimum Wage Act (DCMWA) alleging that restaurant's inclusion of certain employees in pool invalidated its use of tip credit. Arencibia v. 2401 Rest. Corp., 831 F.Supp.2d 164, 2011 U.S. Dist. LEXIS 146979 (2010), appeal dismissed by 2012 U.S. App. LEXIS 17169 (D.C. Cir. Aug. 7, 2012).

§ 32-1003. Requirements.

(a)(1) Except as provided in subsection (h) of this section, as of January 1, 2005, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be $6.60 an hour, or the minimum wage set by the United States government pursuant to the Fair Labor Standards Act (29 U.S.C. § 206 et seq.) ("Fair Labor Standards Act"), plus $1, whichever is greater.

(2) Except as provided in subsection (h) of this section, as of January 1, 2006, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be $7 an hour, or the minimum wage set by the United States government pursuant to the Fair Labor Standards Act, plus $1, whichever is greater.

(b) A person shall be employed in the District of Columbia when:

(1) The person regularly spends more than 50% of their working time in the District of Columbia; or

(2) The person's employment is based in the District of Columbia and the person regularly spends a substantial amount of their working time in the District of Columbia and not more than 50% of their working time in any particular state.

(c) No employer shall employ any employee for a workweek that is longer than 40 hours, unless the employee receives compensation for employment in excess of 40 hours at a rate not less than 1 ½ times the regular rate at which the employee is employed.

(d) All workers with disabilities shall be paid at a rate not less than the minimum wage, except in those instances where a certificate has been issued by the United States Department of Labor that authorizes the payment of less to workers with disabilities under § 214(c) of the Fair Labor Standards Act [29 U.S.C. § 214(c)].

(e) No employer shall be deemed to have violated subsection (c) of this section if the employee works for a retail or service establishment and:

(1) The regular rate of pay of the employee is in excess of 1½ times the minimum hourly rate applicable to the employee under this subchapter; and

(2) More than ½ of the employee's compensation for a representative period (not less than 1 month) represents commissions on goods or services.

(f) As of January 1, 2005, the minimum wage required to be paid by any employer in the District of Columbia to any employee who receives gratuities shall be $2.77 an hour, provided that the employee actually receives gratuities in an amount at least equal to the difference between the hourly wage paid and the minimum wage as set by subsection (a) of this section.

(g) Subsection (f) of this section shall not apply to an employee who receives gratuities unless:

(1) The employee has been informed by the employer of the provisions of subsection (f) of this section; and

(2) All gratuities received by the employee have been retained by the employee, except that this provision shall not be construed to prohibit the pooling of gratuities among employees who customarily receive gratuities.

(h) An employer shall pay a security officer working in a office building in the District of Columbia wages, or any combination of wages and benefits, that are not less than the combined amount of the minimum wage and fringe benefit rate for the guard 1 classification established by the United States Secretary of Labor pursuant to the Service Contract Act of 1965, approved October 22, 1965 (79 Stat. 1034; 41 U.S.C. § 351), as amended.

(Mar. 25, 1993, D.C. Law 9-248, § 4, 40 DCR 761; Apr. 8, 2005, D.C. Law 15-296, § 2, 52 DCR 1483; Apr. 24, 2007, D.C. Law 16-305, § 47, 53 DCR 6198; Mar. 20, 2008, D.C. Law 17-114, § 2(b), 55 DCR 1276.)

Section references. — This section is referred to in §§ 4-205.19k, 32-1002, 32-1004, 32-1006, and 32-1607.

Prior Codifications. — 1981 Ed., § 36-220.2.

Effect of amendments. — D.C. Law 15-296 rewrote subsecs. (a) and (f) which had read:

"(a) On October 1, 1993, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be the minimum wage set by the United States government from time to time pursuant to the Fair Labor Standards Act (29 U.S.C. § 206 et seq.) ("Fair Labor Standards Act"), plus $1."

"(f) In determining the wage of an employee who receives gratuities, the amount paid to the employee by the employer shall be deemed to be increased on account of gratuities by an amount determined by the employer, but not by an amount in excess of 55% of the minimum wage as set by subsection (a) of this section, except that the amount of the increase on account of gratuities determined by the employer shall not exceed the value of gratuities received by the employee."

D.C. Law 16-305, in subsec. (d), substituted "workers with disabilities" for "handicapped workers".

D.C. Law 17-114, in subsecs. (a)(1) and (2), substituted "Except as provided in subsection (h) of this section, as" for "As"; and added subsec. (h).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Minimum Wage Emergency Amendment Act of 2004 (D.C. Act 15-614, November 30, 2004, 51 DCR 11438).

For temporary (90 day) amendment of section, see § 2 of Minimum Wage Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-19, February 17, 2005, 52 DCR 20965).

Legislative history of Law 9-248. — For legislative history of D.C. Law 9-248, see Historical and Statutory Notes following § 32-1001.

Legislative history of Law 15-296. — Law 15-296, the "Minimum Wage Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-888, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-692 and transmitted to both Houses of Congress for its review. D.C. Law 15-296 became effective on April 8, 2005.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 32-241.

Legislative history of Law 17-114. — For Law 17-114, see notes following § 32-1002.

CASE NOTES

ANALYSIS

Authority.
Commissions.
Hours worked.
In general.
New Trial.
Presumptions and burden of proof.
Summary judgment.
Tips.
Weight and sufficiency of evidence.

Authority.

Restaurant Maitre d' was not "employer" within meaning of Fair Labor Standards Act (FLSA), and thus restaurant's inclusion of Maitre d' in tip pool did not invalidate restaurant's use of tip credit under FLSA or District of Columbia Minimum Wage Act (DCMWA); Maitre d' had no authority to hire, fire, or discipline employees without prior authorization, Maitre d' had little, if any, discretion in setting work schedule, Maitre d' was not involved in setting rate or method of payment to employees, and Maitre d' did not maintain employment records. Arencibia v. 2401 Rest. Corp., 831 F.Supp.2d 164, 2011 U.S. Dist. LEXIS 146979 (2010), appeal dismissed by 2012 U.S. App. LEXIS 17169 (D.C. Cir. Aug. 7, 2012).

Commissions.

Jury's finding, in rendering verdict in favor of former employee on her claims that employer violated District of Columbia Wage and Hour Law and breached contract by failing to pay commissions owed on software licensing contract following her resignation, that employee and employer agreed that her commissions would be calculated in accordance with senior sales plan rather than global sales plan, was supported by sufficient evidence including that employee refused to sign global plan as she was dissatisfied with terms, that she worked out alternative arrangement with chief financial officer (CFO), that senior sales plan was only compensation plan that bore employee's signature, and that CFO had authority and exercised authority to enter into unique compensation arrangements with individual employees as incentive or retention strategy. Fudali v. Pivotal Corp., 623 F.Supp.2d 25, 2009 U.S. Dist. LEXIS 47171 (2009), appeal dismissed by 367 Fed. Appx. 165, 2010 U.S. App. LEXIS 17648 (D.C. Cir. 2010).

Hours worked.

Defendant employer would be permitted to amend its answer to correct earlier admission regarding dates of employment in employee's action alleging that employer violated the Fair Labor Standards Act (FLSA), the District of Columbia Minimum Wage Revision Act, and the District of Columbia Wage Payment and Collection law by failing to pay employee time-and-one-half for overtime work; any prejudice to employee would be ameliorated by permitting additional discovery, and amendment would not be futile because dates were relevant to potential statute of limitations defense. Morales v. Landis Constr. Corp., 715 F.Supp.2d 86, 2010 U.S. Dist. LEXIS 55823 (2010).

In general.

Senior Sales Executive failed to state claim for unpaid commissions under District of Columbia Wage and Hour Law; she was squarely within "bona fide executive" exception and also was paid over $85,000 per year or approximately eight times minimum wage, placing her entirely outside Act's purview. Fudali v. Pivotal Corp., 310 F.Supp.2d 22, 2004 U.S. Dist. LEXIS 4749 (2004).

New Trial.

District court would unseal opinion from jury trial of employee's claims that employer violated District of Columbia Wage and Hour Law and breached contract by failing to pay commissions allegedly owed on software licensing contract following her resignation, since court was required to refer to opinion to resolve employer's motion for new trial following jury verdict in favor of employee, and confidential pricing information would be expurgated. Fudali v. Pivotal Corp., 623 F.Supp.2d 25, 2009 U.S. Dist. LEXIS 47171 (2009), appeal dismissed by 367 Fed. Appx. 165, 2010 U.S. App. LEXIS 17648 (D.C. Cir. 2010).

Presumptions and burden of proof.

Restaurant employees met their initial burden of proving their damages as result of restaurant corporation's wage, overtime, and equal pay violations under the FLSA and District of Columbia Wage Payment and Collection Law (DCWPCL), and, thus, District Court could award employees damages, where employees demonstrated that corporations did not keep accurate records, employees demonstrated that they performed work for which they were improperly compensated, and corporations failed to rebut employees' evidence showing amount and extent of their work as matter of just and reasonable inference. Ventura v. Bebo Foods, Inc., 738 F.Supp.2d 1, 2010 U.S. Dist. LEXIS 75395 (2010).

Employee was not entitled to presumption, at summary judgment stage, that his calculation of overtime hours was correct, in action alleging that employer violated the Fair Labor Standards Act (FLSA), the District of Columbia Minimum Wage Revision Act, and the District of Columbia Wage Payment and Collection law

by failing to pay employee time-and-one-half for overtime work, despite employee's claim that employer's records were unreliable, in light of declaration of employer's principal that time sheets were adequate. Morales v. Landis Constr. Corp., 715 F.Supp.2d 86, 2010 U.S. Dist. LEXIS 55823 (2010).

Summary judgment.

Genuine issue of material fact existed as to how many overtime hours employee worked for the relevant time period, precluding summary judgment on claims alleging that employer and its principals violated the Fair Labor Standards Act (FLSA), the District of Columbia Minimum Wage Revision Act, and the District of Columbia Wage Payment and Collection law by failing to pay employee time-and-one-half for overtime. Morales v. Landis Constr. Corp., 715 F.Supp.2d 86, 2010 U.S. Dist. LEXIS 55823 (2010).

Tips.

Restaurant adequately disclosed to employees its use of tip pool, in combination with tip credit, as required by Fair Labor Standards Act (FLSA) and District of Columbia Minimum Wage Act (DCMWA); contrary to employees' argument, minimum wage and tip credit notices posted by restaurant made no representations whatsoever as to treatment of tips, and noted only that if "any employee's tips" combined with hourly wage did not equal minimum wage, restaurant was required to make up difference, and tip pool was verbally explained at time of hire and from time to time during employment. Arencibia v. 2401 Rest. Corp., 831 F.Supp.2d 164, 2011 U.S. Dist. LEXIS 146979 (2010), appeal dismissed by 2012 U.S. App. LEXIS 17169 (D.C. Cir. Aug. 7, 2012).

Restaurant's director of sales and sommelier, whose tips and fees were paid out before restaurant's tip pool was calculated, were not participants in pool, for purposes of former restaurant employees' claims under Fair Labor Standards Act (FLSA) and District of Columbia Minimum Wage Act (DCMWA) alleging that restaurant's inclusion of certain employees in pool invalidated its use of tip credit. Arencibia v. 2401 Rest. Corp., 831 F.Supp.2d 164, 2011 U.S. Dist. LEXIS 146979 (2010), appeal dismissed by 2012 U.S. App. LEXIS 17169 (D.C. Cir. Aug. 7, 2012).

Weight and sufficiency of evidence.

Jury's finding, in rendering verdict in favor of former employee on her claims that employer violated District of Columbia Wage and Hour Law and breached contract by failing to pay commissions owed on software licensing contract following her resignation, that contract had extended payment terms, was supported by sufficient evidence including that phrase "extended payment terms" was found in sales contract, and employee and two other executives testified that contract contained extended payment terms. Fudali v. Pivotal Corp., 623 F.Supp.2d 25, 2009 U.S. Dist. LEXIS 47171 (2009), appeal dismissed by 367 Fed. Appx. 165, 2010 U.S. App. LEXIS 17648 (D.C. Cir. 2010).

Jury's finding, in rendering verdict in favor of former employee on her claims that employer violated District of Columbia Wage and Hour Law and breached contract by failing to pay commissions owed on software licensing contract following her resignation, that contract did not limit employee's commissionable revenue to licenses and first year of maintenance rather than total cost of sales deal, was supported by sufficient evidence including that most of employer's contracts did not contain more than one year of maintenance, but that employer's common practice was to pay commissions on more than first year of maintenance. Fudali v. Pivotal Corp., 623 F.Supp.2d 25, 2009 U.S. Dist. LEXIS 47171 (2009), appeal dismissed by 367 Fed. Appx. 165, 2010 U.S. App. LEXIS 17648 (D.C. Cir. 2010).

Jury's finding, in rendering verdict in favor of former employee on her claims that employer violated District of Columbia Wage and Hour Law and breached contract by failing to pay commissions owed on software licensing contract following her resignation, that contract had extended payment terms, was supported by sufficient evidence including that phrase "extended payment terms" was found in sales contract, and employee and two other executives testified that contract contained extended payment terms. Fudali v. Pivotal Corp., 623 F.Supp.2d 25, 2009 U.S. Dist. LEXIS 47171 (2009), appeal dismissed by 367 Fed. Appx. 165, 2010 U.S. App. LEXIS 17648 (D.C. Cir. 2010).

§ 32-1004. Exceptions.

(a) The minimum wage and overtime provisions of § 32-1003 shall not apply with respect to:

(1) Any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman (as these terms are defined by the Secretary of Labor under 201 et seq. of the Fair Labor Standards Act); or

(2) Any employee engaged in the delivery of newspapers to the home of the consumer.

(b) The overtime provisions of § 32-1003(c) shall not apply with respect to:

(1) Any employee employed as a seaman;

(2) Any employee employed by a railroad;

(3) Any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, or trucks, if employed by a nonmanufacturing establishment primarily engaged in the business of selling these vehicles to ultimate purchasers;

(4) Repealed.

(5) Any employee employed as an attendant at a parking lot or parking garage; or

(6) Any employee employed by a carrier by air who voluntarily exchanges workdays with another employee for the primary purpose of utilizing air travel benefits available to these employees.

(Mar. 25, 1993, D.C. Law 9-248, § 5, 40 DCR 761; May 31, 2012, D.C. Law 19-127, § 2, 59 DCR 2252.)

Section references. — This section is referred to in § 32-1015.

Prior Codifications. — 1981 Ed., § 36-220.3.

Effect of amendments. — D.C. Law 19-127 repealed subsec. (b)(4), which formerly read:

"(4) Any employee employed primarily to wash automobiles by an employer whose annual dollar volume of sales is derived by more than 50% from washing automobiles, and for the employee's employment in excess of 160 hours over a period of 4 consecutive workweeks, the employee receives compensation at a rate of 1 ½ times or more the regular rate at which he is employed;"

Legislative history of Law 9-248. — For legislative history of D.C. Law 9-248, see Historical and Statutory Notes following § 32-1001.

Legislative history of Law 19-127. — Law 19-127, the "Car Wash Employee Overtime Amendment Act of 2012", was introduced in Council and assigned Bill No. 19-247, which was referred to the Committee on Housing and Workforce Development. The Bill was adopted on first and second readings on February 7, 2012, and March 6, 2012, respectively. Signed by the Mayor on March 18, 2012, it was assigned Act No. 19-321 and transmitted to both Houses of Congress for its review. D.C. Law 19-127 became effective on May 31, 2012.

CASE NOTES

ANALYSIS

Construction and application.
Executive, administrative, or professional employees.
Presumptions and burden of proof.
Review.

Construction and application.

Statutory exemptions to overtime compensation required under District of Columbia Wage and Hour Law are to be construed narrowly, and the burden is on the employer to prove that a particular exemption applies. Powell v. Am. Red Cross, 518 F.Supp.2d 24, 2007 U.S. Dist. LEXIS 42543 (2007), appeal dismissed by 2008 U.S. App. LEXIS 28131 (D.C. Cir. Mar. 21, 2008).

Executive, administrative, or professional employees.

Senior Sales Executive failed to state claim for unpaid commissions under District of Columbia Wage and Hour Law; she was squarely within "bona fide executive" exception and also was paid over $85,000 per year or approximately eight times minimum wage, placing her entirely outside Act's purview. Fudali v. Pivotal Corp., 310 F.Supp.2d 22, 2004 U.S. Dist. LEXIS 4749 (2004).

Registered nurse's "primary duty" in her job with nonprofit health organization was deter-

mining whether military personnel deployed overseas by the organization met medical requirements, and as such duty required use of her advanced knowledge, nurse was exempt from overtime pay requirements of District of Columbia Wage and Hour Law and Department of Labor (DOL) regulations pursuant to learned professional exemption, despite her performance of other nonexempt job tasks; medical assessment of deployed personnel was of principal importance to organization's worldwide mission. Powell v. Am. Red Cross, 518 F.Supp.2d 24, 2007 U.S. Dist. LEXIS 42543 (2007), appeal dismissed by 2008 U.S. App. LEXIS 28131 (D.C. Cir. Mar. 21, 2008).

Job responsibilities of registered nurse employed by nonprofit health organization, which included determining whether organization's military personnel met medical requirements for deployment overseas, required use of nurse's advanced knowledge and the exercise of her discretion and judgment, as required for her to be exempt from overtime pay requirements under District of Columbia Wage and Hour Law and Department of Labor (DOL) regulations pursuant to learned professional exemption. Powell v. Am. Red Cross, 518 F.Supp.2d 24, 2007 U.S. Dist. LEXIS 42543 (2007), appeal dismissed by 2008 U.S. App. LEXIS 28131 (D.C. Cir. Mar. 21, 2008).

Registered nurses possess advanced knowledge in a field of science, as required to be exempt from overtime pay requirements under District of Columbia Wage and Hour Law and Department of Labor (DOL) regulations pursuant to learned professional exemption, based on their possession of a registered nurse license. Powell v. Am. Red Cross, 518 F.Supp.2d 24, 2007 U.S. Dist. LEXIS 42543 (2007), appeal dismissed by 2008 U.S. App. LEXIS 28131 (D.C. Cir. Mar. 21, 2008).

Administrative exemption to FLSA did not apply to employees seeking overtime pay; employees acted as counselors who taught independent living skills to children in foster care, they did not hire, fire or discipline other employees, nor were they responsible for reviewing or evaluating work of others. D.C. Code 1981, § 36-220.3(a)(1); Fair Labor Standards Act of 1938, § 1 et seq., 29 U.S.C. § 201 et seq. Jones & Assocs. v. District of Columbia, 642 A.2d 130, 1994 D.C. App. LEXIS 77 (1994).

Presumptions and burden of proof.

Employer bears burden of proving that employee is exempt from overtime provisions in FLSA. Fair Labor Standards Act of 1938, § 1 et seq., 29 U.S.C. § 201 et seq. Jones & Assocs. v. District of Columbia, 642 A.2d 130, 1994 D.C. App. LEXIS 77 (1994).

Review.

Question whether exemption from FLSA applies to particular employee is one of law, and trial court's legal ruling is reviewed de novo; underlying factual findings must be sustained unless they are clearly erroneous. Fair Labor Standards Act of 1938, § 1 et seq., 29 U.S.C. § 201 et seq. Jones & Assocs. v. District of Columbia, 642 A.2d 130, 1994 D.C. App. LEXIS 77 (1994).

§ 32-1005. Authority of Mayor.

The Mayor or his authorized representative shall have the authority to:

(1) Investigate and ascertain the wages of persons employed in any occupation in the District of Columbia;

(2) Enter and inspect the place of business or employment of any employer in the District of Columbia in order to:

(A) Examine and inspect any books, registers, payrolls, and other records as the Mayor or the Mayor's authorized representative may deem necessary or appropriate;

(B) Copy books, registers, payrolls, and other records as the Mayor or the Mayor's authorized representative may deem necessary or appropriate; and

(C) Question an employee for the purpose of ascertaining whether the provisions of this subchapter and the orders and regulations issued thereunder have been and are being complied with; and

(3) Require from any employer full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, and any other information that pertains to the employment of the employees as the Mayor or the Mayor's authorized representative may deem necessary or appropriate to carry out the purposes of this subchapter.

(Mar. 25, 1993, D.C. Law 9-248, § 6, 40 DCR 761.)

Prior Codifications. — 1981 Ed., § 36-220.4.

Legislative history of Law 9-248. — For legislative history of D.C. Law 9-248, see Historical and Statutory Notes following § 32-1001.

§ 32-1006. Regulatory powers of Mayor.

(a) The Mayor shall make and revise regulations, including definitions of terms, as deemed appropriate to carry out the purposes of this subchapter or necessary to prevent its circumvention or evasion and to safeguard the minimum wage rates and the overtime provisions established by this subchapter.

(b) The Mayor shall make regulations in order to:

(1) Provide reasonable allowances for board, lodging, or services customarily furnished by employers to employees; and

(2) Provide allowances for other special conditions or circumstance that may be usual in a particular employer-employee relationship.

(c) The Mayor may make regulations in order to:

(1) Define and govern the employment of workers under 18 years of age and provide minimum wages for these workers at a rate lower than that specified in § 32-1003;

(2) Govern piece rates, bonuses, and commissions in relation to time rates;

(3) Govern part-time rates;

(4) Govern minimum daily wages;

(5) Relate to wage provisions governing split shifts and excessive spread of hours; and

(6) Govern uniforms, tools, travel, and other items of expense incurred by employees as a condition of employment.

(d) The Council of the District of Columbia shall review and make recommendations, as needed, to the Mayor or the Mayor's authorized representative, to ensure that the minimum wage set by the federal government, plus $1, is fair and adequate for employees in the District of Columbia.

(Mar. 25, 1993, D.C. Law 9-248, § 7, 40 DCR 761.)

Section references. — This section is referred to in §§ 32-1002, and 32-1010.

Prior Codifications. — 1981 Ed., § 36-220.5.

Legislative history of Law 9-248. — For legislative history of D.C. Law 9-248, see Historical and Statutory Notes following § 32-1001.

§ 32-1007. Investigatory powers of Mayor.

The Mayor shall have the power to administer oaths and require by subpoena the attendance and testimony of witnesses, the production of all books, registers, and other evidence relative to any matters under investigation, at any public hearing, or at any meeting of any committee or for the use of the Mayor in securing compliance with this subchapter. In case of disobedience to a subpoena, the Mayor may invoke the aid of the Superior Court of

the District of Columbia to require the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpoena, the Court may issue an order to require an appearance before the Mayor, the production of documentary evidence, and the giving of evidence, and any failure to obey the order of the Court may be punished by the Court as contempt.

(Mar. 25, 1993, D.C. Law 9-248, § 8, 40 DCR 761.)

Prior Codifications. — 1981 Ed., § 36-220.6.

Legislative history of Law 9-248. — For legislative history of D.C. Law 9-248, see Historical and Statutory Notes following § 32-1001.

§ 32-1008. Duties of employers; open records.

(a)(1) Every employer subject to any provision of this subchapter or of any regulation or order issued under this subchapter shall make, keep, and preserve for a period of not less than 3 years a record of:

(A) The name, address, and occupation of each employee;

(B) A record of the date of birth of any employee under 19 years of age;

(C) The rate of pay and the amount paid each pay period to each employee;

(D) The hours worked each day and each workweek by each employee; and

(E) Any other records or information as the Mayor shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this subchapter or of the regulations issued under this subchapter.

(2) Any records shall be open and made available for inspection or transcription by the Mayor or the Mayor's authorized representative at any reasonable time. Every employer shall furnish the Mayor or to the Mayor's authorized representative on demand a sworn statement of records and information upon forms prescribed or approved by the Mayor.

(b) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the date of the wage payment, gross wages paid, deductions from and additions to wages, net wages paid, hours worked during the pay period, and any other information as the Mayor may prescribe by regulation.

(Mar. 25, 1993, D.C. Law 9-248, § 9, 40 DCR 761.)

Section references. — This section is referred to in § 32-1010.

Prior Codifications. — 1981 Ed., § 36-220.7.

Legislative history of Law 9-248. — For legislative history of D.C. Law 9-248, see Historical and Statutory Notes following § 32-1001.

CASE NOTES

ANALYSIS

Commissions.
New Trial.
Presumptions and burden of proof.
Weight and sufficiency of evidence.

Commissions.

Jury's finding, in rendering verdict in favor of former employee on her claims that employer

violated District of Columbia Wage and Hour Law and breached contract by failing to pay commissions owed on software licensing contract following her resignation, that employee and employer agreed that her commissions would be calculated in accordance with senior sales plan rather than global sales plan, was supported by sufficient evidence including that employee refused to sign global plan as she was dissatisfied with terms, that she worked out alternative arrangement with chief financial officer (CFO), that senior sales plan was only compensation plan that bore employee's signature, and that CFO had authority and exercised authority to enter into unique compensation arrangements with individual employees as incentive or retention strategy. Fudali v. Pivotal Corp., 623 F.Supp.2d 25, 2009 U.S. Dist. LEXIS 47171 (2009), appeal dismissed by 367 Fed. Appx. 165, 2010 U.S. App. LEXIS 17648 (D.C. Cir. 2010).

New Trial.

District court would unseal opinion from jury trial of employee's claims that employer violated District of Columbia Wage and Hour Law and breached contract by failing to pay commissions allegedly owed on software licensing contract following her resignation, since court was required to refer to opinion to resolve employer's motion for new trial following jury verdict in favor of employee, and confidential pricing information would be expurgated. Fudali v. Pivotal Corp., 623 F.Supp.2d 25, 2009 U.S. Dist. LEXIS 47171 (2009), appeal dismissed by 367 Fed. Appx. 165, 2010 U.S. App. LEXIS 17648 (D.C. Cir. 2010).

Presumptions and burden of proof.

Restaurant employees met their initial burden of proving their damages as result of restaurant corporation's wage, overtime, and equal pay violations under the FLSA and District of Columbia Wage Payment and Collection Law (DCWPCL), and, thus, District Court could award employees damages, where employees demonstrated that corporations did not keep accurate records, employees demonstrated that they performed work for which they were improperly compensated, and corporations failed to rebut employees' evidence showing amount and extent of their work as matter of just and reasonable inference. Ventura v. Bebo Foods, Inc., 738 F.Supp.2d 1, 2010 U.S. Dist. LEXIS 75395 (2010).

Weight and sufficiency of evidence.

Jury's finding, in rendering verdict in favor of former employee on her claims that employer violated District of Columbia Wage and Hour Law and breached contract by failing to pay commissions owed on software licensing contract following her resignation, that contract had extended payment terms, was supported by sufficient evidence including that phrase "extended payment terms" was found in sales contract, and employee and two other executives testified that contract contained extended payment terms. Fudali v. Pivotal Corp., 623 F.Supp.2d 25, 2009 U.S. Dist. LEXIS 47171 (2009), appeal dismissed by 367 Fed. Appx. 165, 2010 U.S. App. LEXIS 17648 (D.C. Cir. 2010).

Jury's finding, in rendering verdict in favor of former employee on her claims that employer violated District of Columbia Wage and Hour Law and breached contract by failing to pay commissions owed on software licensing contract following her resignation, that contract did not limit employee's commissionable revenue to licenses and first year of maintenance rather than total cost of sales deal, was supported by sufficient evidence including that most of employer's contracts did not contain more than one year of maintenance, but that employer's common practice was to pay commissions on more than first year of maintenance. Fudali v. Pivotal Corp., 623 F.Supp.2d 25, 2009 U.S. Dist. LEXIS 47171 (2009), appeal dismissed by 367 Fed. Appx. 165, 2010 U.S. App. LEXIS 17648 (D.C. Cir. 2010).

Jury's finding, in rendering verdict in favor of former employee on her claims that employer violated District of Columbia Wage and Hour Law and breached contract by failing to pay commissions owed on software licensing contract following her resignation, that contract had extended payment terms, was supported by sufficient evidence including that phrase "extended payment terms" was found in sales contract, and employee and two other executives testified that contract contained extended payment terms. Fudali v. Pivotal Corp., 623 F.Supp.2d 25, 2009 U.S. Dist. LEXIS 47171 (2009), appeal dismissed by 367 Fed. Appx. 165, 2010 U.S. App. LEXIS 17648 (D.C. Cir. 2010).

§ 32-1009. Posting of act and regulations on premises; distribution of copies to employers.

(a) Every employer who is subject to any provision of this subchapter or any regulation issued under this subchapter shall keep a copy or summary of this subchapter and any applicable regulation issued under this subchapter, in a form prescribed or approved by the Mayor, posted in a conspicuous and

accessible place in or about the premises at which any employee covered by the regulation is employed.

(b) Employers shall be furnished copies or summaries of this subchapter by the Mayor on request without charge.

(Mar. 25, 1993, D.C. Law 9-248, § 10, 40 DCR 761.)

Section references. — This section is referred to in § 32-1010.

Prior Codifications. — 1981 Ed., § 36-220.8.

Legislative history of Law 9-248. — For legislative history of D.C. Law 9-248, see Historical and Statutory Notes following § 32-1001.

§ 32-1010. Violations.

It shall be unlawful for any employer to:

(1) Violate any of the provisions of this subchapter or any of the provisions of any regulation issued under this subchapter;

(2) Violate any of the provisions of §§ 32-1008 and 32-1009 or any regulation made under the provisions of § 32-1006, or to make any statement, report, or record filed or kept pursuant to the provisions of § 32-1008 or any regulation or order issued under § 32-1006 knowing the statement, report, or record to be false in a material respect;

(3) Discharge or in any other manner discriminate against any employee because that employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to this subchapter or has testified or is about to testify in any proceeding; or

(4) Hinder or delay the Mayor or the Mayor's authorized representative in the enforcement of this subchapter, to refuse to admit the Mayor or the Mayor's authorized representative to any place of employment upon demand, to refuse to make available any record to the Mayor or Mayor's authorized agent required to be made, kept, or preserved under this subchapter, or to fail to post a summary or copy of this subchapter or of any applicable regulation or order, as required under § 32-1009.

(Mar. 25, 1993, D.C. Law 9-248, § 11, 40 DCR 761.)

Section references. — This section is referred to in § 32-1011.

Prior Codifications. — 1981 Ed., § 36-220.9.

Temporary Addition of Section. — Section 2 of D.C. Law 18-150 added a section to read as follows:

"Sec. 2. (a) The Mayor shall implement a Rhode Island Place Working Group ('working group') within 30 days to collaborate with businesses located in the Rhode Island Place Shopping Center bordered by Rhode Island Avenue, N.E., and Brentwood Road, N.E., in Ward 5 to address the challenge of day laborers congregating at the site.

"(b) The working group shall make recommendations for a civil resolution to the day-laborer concern at the Rhode Island Place Shopping Center site.

"(c) The working group shall meet at least every 2 weeks. The members of the working group shall include:

"(1) The Ward 5 Councilmember, or his designee;

"(2) The Chairperson of Advisory Neighborhood Commission 5B;

"(3) The Attorney General, or a designated staff attorney;

"(4) The Director of the Office of Latino Affairs, or her designee;

"(5) Representatives from businesses located in the Rhode Island Place Shopping Center;

"(6) Representatives from other District agencies as determined by the Mayor; and

"(7) Other workers' rights stakeholders as determined by the Ward 5 Councilmember.

"(d) The Mayor shall submit a report regarding the District's proposed course of action to

resolve the challenge of day laborers in the Rhode Island Place Shopping Center, based on the working group recommendations, by July 1, 2010."

Section 4(b) of D.C. Law 18-150 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2, of Rhode Island Place Shopping Center Working Group Emergency Act of 2009 (D.C. Act 18-315, February 23, 2010, 57 DCR 1652).

Legislative history of Law 9-248. — For legislative history of D.C. Law 9-248, see Historical and Statutory Notes following § 32-1001.

CASE NOTES

Analysis

Pleadings.
Prejudice.
Retaliatory discharge.
Review.
Sufficiency of evidence.

Pleadings.

Corporation's unsubstantiated allegations were insufficient to establish, by requisite clear and convincing evidence, that day laborers engaged in fraudulent conduct in pursuing their action against corporation and others for alleged violations of Fair Labor Standards Act (FLSA), District of Columbia wage and hour law, and District of Columbia wage payment law, and therefore setting aside of default judgment entered against corporation was not warranted on grounds of fraud or misconduct. Canales v. A.H.R.E., Inc., 254 F.R.D. 1, 2008 U.S. Dist. LEXIS 85011 (2008).

Corporation satisfied requirement that it assert meritorious defense in seeking to set aside default judgment entered against it in day laborers' action alleging violations of Fair Labor Standards Act (FLSA), District of Columbia wage and hour law, and District of Columbia wage payment law when corporation contended that it never employed laborers. Canales v. A.H.R.E., Inc., 254 F.R.D. 1, 2008 U.S. Dist. LEXIS 85011 (2008).

Prejudice.

Day laborers would be substantially prejudiced by the setting aside, for mistake, inadvertence, or excusable neglect, of their default judgment against corporation in their action alleging violations of Fair Labor Standards Act (FLSA), District of Columbia wage and hour law, and District of Columbia wage payment law, particularly when laborers had already domesticated default judgment in county court, given corporation's admission that it was fighting bankruptcy and was virtually insolvent, and given likelihood that delay had increased difficulty of locating key witnesses and evidence, especially since corporation had admitted that its current situation was chaotic and it had closed its offices and laid off its employees. Canales v. A.H.R.E., Inc., 254 F.R.D. 1, 2008 U.S. Dist. LEXIS 85011 (2008).

Retaliatory discharge.

Employee who alleged that he was discharged in retaliation for filing and prosecuting class action against employer for employer's deductions from the pay of couriers to cover cargo insurance and workers' compensation insurance stated wrongful discharge cause of action. D.C. Code 1981, § 36-220 et seq. Freas v. Archer Services, Inc., 716 A.2d 998, 1998 D.C. App. LEXIS 163 (1998).

Review.

Setting aside of default judgment entered against corporation in day laborers' action alleging violations of Fair Labor Standards Act (FLSA), District of Columbia wage and hour law, and District of Columbia wage payment law was not warranted on grounds of mistake, inadvertence, or excusable neglect, even though corporation asserted meritorious defense that it did not employ laborers, inasmuch as defense did not outweigh willful delay by corporation, which did not explain its failure to file timely answer or its delay of more than 15 months in filing response with court, and did not outweigh prejudice that laborers would incur if default judgment was set aside, particularly in light of diminished likelihood, due to corporation's financial difficulties, that laborers would be able to collect on judgment. Canales v. A.H.R.E., Inc., 254 F.R.D. 1, 2008 U.S. Dist. LEXIS 85011 (2008).

Sufficiency of evidence.

Corporation's failure to provide any evidence of extraordinary circumstances and inability to show that it was faultless in delay precluded setting aside of default judgment entered against corporation, in day laborers' action for alleging violations of Fair Labor Standards Act (FLSA), District of Columbia wage and hour law, and District of Columbia wage payment law, under catchall provision of rule governing motions for relief from judgment. Canales v. A.H.R.E., Inc., 254 F.R.D. 1, 2008 U.S. Dist. LEXIS 85011 (2008).

§ 32-1011. Penalties; prosecution.

(a) Any person who willfully violates any of the provisions of § 32-1010 shall, upon conviction, be subject to a fine of not more than $10,000, or to imprisonment of not more than 6 months, or both.

(b) No person shall be imprisoned under this section except for an offense committed after the conviction of that person for a prior offense under this section.

(c) Prosecutions for violations of this subchapter shall be in the Superior Court of the District of Columbia and shall be conducted by the Corporation Counsel of the District of Columbia.

(d) In addition to and apart from the penalties or remedies provided for in this section or § 32-1012, the Mayor shall assess and collect administrative penalties up to a maximum of $300 for the first violation and up to a maximum of $500 for each subsequent violation. The Mayor shall consider factors that include the history of previous violations by the employer, the administrative costs of the proceeding to collect, and the size of the employer's business, when determining the penalty to be imposed. In addition, the Mayor may assess more than one administrative penalty against an employer for the same adversely affected employee if the employer has violated more than one statutory provision of this subchapter.

(e) No administrative penalty shall be collected unless the Mayor provides any person alleged to have violated a provision of § 32-1010 notification of the violation, notification of the amount of the administrative penalty to be imposed, and an opportunity to request an informal hearing. If an informal hearing is requested, the Mayor shall issue a final order following the hearing containing a finding that a violation has or has not occurred. If an informal hearing is not requested, the person to whom notification of violation was provided shall transmit to the Mayor the amount of the penalty within 15 days following notification.

(Mar. 25, 1993, D.C. Law 9-248, § 12, 40 DCR 761; Apr. 3, 2001, D.C. Law 13-245, § 2, 48 DCR 647.)

Prior Codifications. — 1981 Ed., § 36-220.10.

Effect of amendments. — D.C. Law 13-245 added subsecs. (d) and (e).

Legislative history of Law 9-248. — For legislative history of D.C. Law 9-248, see Historical and Statutory Notes following § 32-1001.

Legislative history of Law 13-245. — Law 13-245, the "Wage-Hour Enforcement Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-681, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-530 and transmitted to both Houses of Congress for its review. D.C. Law 13-245 became effective on April 3, 2001.

Editor's notes. — Section 4 of D.C. Law 13-245 provided: "The Mayor, pursuant to title 1 of the District of Columbia Administrative Procedure Act shall issue regulations to implement the provisions of this act."

§ 32-1012. Civil liability.

(a) Any employer who pays any employee less than the wage to which that employee is entitled under this subchapter shall be liable to that employee in

the amount of the unpaid wages, and an additional amount as liquidated damages, except that if, in any action commenced to recover unpaid wages or liquidated damages, the employer shows to the satisfaction of the court that the act or omission that gave rise to the action was in good faith and that the employer had reasonable grounds for the belief that the act or omission was not a violation of this subchapter, the court may award no liquidated damages, or award any amount not to exceed the amount specified in this section.

(b) Action to recover damages sued for under this subchapter may be maintained in any court of competent jurisdiction in the District of Columbia by any 1 or more employees for and on behalf of the employee and other employees who are similarly situated. No employee shall be a party plaintiff to any action brought under this subchapter unless the employee gives written consent to become a party and the written consent is filed in the court in which the action is brought.

(c) The court in which the action is brought shall allow for reasonable attorney's fees and costs of the action to be paid by the defendant to the prevailing party.

(d) Any agreement between an employer and employee in which the employee agrees to work for less than the wages to which the employee is entitled under this subchapter or any regulation issued under this subchapter shall be no defense to any action to recover unpaid wages or liquidated damages.

(e) At the written request of any employee who is paid less than the employee is entitled under this subchapter or any regulation issued under this subchapter, the Mayor may take an assignment of the wage claim in trust for the assigning employee and may bring any legal action necessary to collect the claim. In an action of this type, the defendant shall be required to pay the costs and reasonable attorney's fees as may be allowed by the court.

(f) The Mayor is authorized to supervise the payment of unpaid wages owed to any employee under this subchapter or any regulation issued under this subchapter, and the agreement of any employee to accept this payment, shall upon full payment, constitute a waiver by the employee of any right the employee may have under subsection (a) of this section to any unpaid wages, and an additional equal amount as liquidated damages.

(Mar. 25, 1993, D.C. Law 9-248, § 13, 40 DCR 761.)

Prior Codifications. — 1981 Ed., § 36-220.11.

Legislative history of Law 9-248. — For legislative history of D.C. Law 9-248, see Historical and Statutory Notes following § 32-1001.

CASE NOTES

Analysis

Attorney's fees.
Class actions.
Damages.
In general.

Attorney's fees.

Employees whose rights under Fair Labor Standards Act (FLSA), D.C. Minimum Wage Act Revision Act (DCMWA), and D.C. Wage Payment and Collection Law (DCWPCL) are violated are entitled to reasonable attorney fees and costs. Pleitez v. Carney, 594 F.Supp.2d 47, 2009 U.S. Dist. LEXIS 6791 (2009).

Former employee who sued her former employer for wrongful discharge and violation of

the D.C. Minimum Wage Act (DCMWA) was the prevailing party under the DCMWA and, thus, was entitled to attorney fees under the DCMWA, even though former employer argued that the jury found that former employer had reasonable grounds for a good-faith belief that its actions were not a violation of the DCMWA; the jury awarded former employee the amount of unpaid overtime claimed by her, such that she clearly obtained at least some relief on the merits of her DCMWA claim. Feeney v. Joseph J. Magnolia, Inc., 137 WLR 197 (Super. Ct. 2009).

Lay person proceeding pro se, who prevailed on claim for unpaid overtime hours, was not entitled to recover attorney fees under wage and hour statute. Jones v. Council of Opportunity for Education, Ind., 135 WLR 1653 (Super. Ct. 2007).

Class actions.

Notices of collective action brought by former employees of commercial cleaning company against company, alleging violation of overtime provisions of the Fair Labor Standards Act (FLSA) and the District of Columbia Minimum Wage Act Revision Act, would be sent to putative class members who were or had been employed by company three years prior to filing of complaint, rather than three years prior to date on which notices would be sent, where date of notice distribution was uncertain; it made administrative sense to set firm date for notice period. Castillo v. P & R Enters., 517 F.Supp.2d 440, 2007 U.S. Dist. LEXIS 77561 (2007).

Commercial cleaning company was required to post notice of collective action brought by former employees against company, alleging violation of overtime provisions of the Fair Labor Standards Act (FLSA) and the District of Columbia Minimum Wage Act Revision Act, in all of its workplaces, in the same areas in which company was required to post government-related notices, but only to the extent that such spaces were located in company's offices or office spaces designated for company's use in third-party buildings; company was not required to request any third-party to post notice in third-party areas not designated for company's use. Castillo v. P & R Enters., 517 F.Supp.2d 440, 2007 U.S. Dist. LEXIS 77561 (2007).

Commercial cleaning company was required to produce, subject to properly crafted protective order, the names and addresses of its current and former employees who were putative class members in collective action brought by former employees of company, alleging violation of overtime provisions of the Fair Labor Standards Act (FLSA) and the District of Columbia Minimum Wage Act Revision Act, for purpose of providing notice to members of action; method of notice was effective and efficient means by which to reach current and former employees. Castillo v. P & R Enters., 517 F.Supp.2d 440, 2007 U.S. Dist. LEXIS 77561 (2007).

Fact that some of commercial cleaning company's employees were classified as "full time" while some were classified as "part time" was immaterial to motion brought by plaintiffs, who were former employees of company, seeking certification of class under the Fair Labor Standards Act (FLSA), in action against company alleging violation of overtime provisions of the FLSA and the District of Columbia Minimum Wage Act Revision Act, where proposed class definition restricted group to only those employees who had worked more than 40-hours in a work week and who had not received compensation, and did not distinguish between full and part-time employees. Castillo v. P & R Enters., 517 F.Supp.2d 440, 2007 U.S. Dist. LEXIS 77561 (2007).

Fact that some of commercial cleaning company's employees working in certain buildings were subject to union representation, while employees working in other buildings were not, was immaterial to motion brought by plaintiffs, who were former employees of company, seeking certification of class under the Fair Labor Standards Act (FLSA), in action against company alleging violation of overtime provisions of the FLSA and the District of Columbia Minimum Wage Act Revision Act, where unionization did not appear to affect how employees performed work in their assigned buildings, nor how their hours were submitted to payroll for compensation. Castillo v. P & R Enters., 517 F.Supp.2d 440, 2007 U.S. Dist. LEXIS 77561 (2007).

Former employees of commercial cleaning company made modest factual showing sufficient to demonstrate that putative class members were similarly situated to themselves, as required for district court to certify conditional class under the Fair Labor Standards Act (FLSA), in action brought by employees alleging that company violated overtime provisions of FLSA and the District of Columbia Minimum Wage Act Revision Act; although some differences existed between the members, including job duties and titles, and members worked in buildings operated by different property management companies with different levels of oversight, all members had similar job responsibilities, were classified by company as non-exempt for purposes of FLSA, and were or had been employed by company to clean commercial real estate buildings in the District of Columbia, time sheets and pay stubs indicated that members were scheduled for, and worked more than, 40 hours per week, and were not compensated with overtime pay, and employees alleged that company's general manager indicated that

the company "does not pay overtime to anyone." Castillo v. P & R Enters., 517 F.Supp.2d 440, 2007 U.S. Dist. LEXIS 77561 (2007).

Proposed class of plaintiffs in action brought by former employees of commercial cleaning company, alleging that company violated overtime provisions of the Fair Labor Standards Act (FLSA) and the District of Columbia Minimum Wage Act Revision Act, could only include employees who worked or had worked in the District of Columbia for company, and not employees who were or had been employed by company outside the District of Columbia, although plaintiffs' motion seeking to certify class referred to employees in the "Metro-DC area," where their complaint stated that they were suing on behalf of themselves and a class consisting "of all persons employed by Defendant in the District of Columbia since 2004;" plaintiffs could not use motion to expand scope of proposed class beyond that which was contained in complaint. Castillo v. P & R Enters., 517 F.Supp.2d 440, 2007 U.S. Dist. LEXIS 77561 (2007).

Damages.

Employee who was entitled to $144.50 in unpaid overtime and liquidated damages pursuant to FLSA, could not collect twice for the same unpaid overtime compensation even though employer's failure to pay also constituted violation of District of Columbia Minimum Wage Act Revision Act (DCMWA). Encinas v. J.J. Drywall Corp., 840 F.Supp.2d 6, 2012 U.S. Dist. LEXIS 276 (2012).

Employer who had unlawfully deducted 10% of gross wages paid to its drywall employees, in violation of District of Columbia Wage Payment and Wage Collection Law (DCWPCL), and who had failed to maintain any employee payroll records, was liable for damages in the amount of $39,024 total in unlawful wage deductions, under theory of unjust enrichment, based on average number of employees working on jobsite, the duration of their work, and employees' promised hourly wages. Encinas v. J.J. Drywall Corp., 840 F.Supp.2d 6, 2012 U.S. Dist. LEXIS 276 (2012).

Employees who were awarded unpaid hourly and overtime wages were also entitled to an amount equal to the sum of their unpaid hourly wages and unpaid overtime wages as liquidated damages under Fair Labor Standards Act (FLSA), D.C. Minimum Wage Act Revision Act (DCMWA), and D.C. Wage Payment and Collection Law (DCWPCL). Pleitez v. Carney, 594 F.Supp.2d 47, 2009 U.S. Dist. LEXIS 6791 (2009).

Amount of overtime pay owed to former employee was an easily ascertainable sum certain and thus was a liquidated debt, such that former employee was entitled to an award of prejudgment interest after she prevailed on her claim that former employer violated the D.C. Minimum Wage Act (DCMWA), where the D.C. Department of Employment Services (DOES) determined that former employer owed former employee $4529.87 in unpaid overtime, minus costs, as of the last day that DOES calculated that former employee was owed pay for overtime work. Feeney v. Joseph J. Magnolia, Inc., 137 WLR 197 (Super. Ct. 2009).

In general.

Senior Sales Executive failed to state claim for unpaid commissions under District of Columbia Wage and Hour Law; she was squarely within "bona fide executive" exception and also was paid over $85,000 per year or approximately eight times minimum wage, placing her entirely outside Act's purview. Fudali v. Pivotal Corp., 310 F.Supp.2d 22, 2004 U.S. Dist. LEXIS 4749 (2004).

§ 32-1013. Limitations.

Any action commenced on or after March 25, 1993, to enforce any cause of action for unpaid wages or liquidated damages under this subchapter or any regulation issued under this subchapter must be commenced within 3 years after the cause of action accrued or the cause of action shall be forever barred.

(Mar. 25, 1993, D.C. Law 9-248, § 14, 40 DCR 761.)

Prior Codifications. — 1981 Ed., § 36-220.12.

Legislative history of Law 9-248. — For legislative history of D.C. Law 9-248, see Historical and Statutory Notes following § 32-1001.

§ 32-1014. Collective bargaining.

Nothing in this subchapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their

employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the standards applicable under the provisions of this subchapter.

(Mar. 25, 1993, D.C. Law 9-248, § 15, 40 DCR 761.)

Prior Codifications. — 1981 Ed., § 36-220.13.

Legislative history of Law 9-248. — For legislative history of D.C. Law 9-248, see Historical and Statutory Notes following § 32-1001.

§ 32-1015. Application to revised wage orders.

Section 32-1004(a) shall not apply to any revised wage order issued by the Wage-Hour Board that sets a minimum wage that is higher than the minimum wage set by this subchapter.

(Mar. 25, 1993, D.C. Law 9-248, § 16, 40 DCR 761.)

Prior Codifications. — 1981 Ed., § 36-220.14.

Legislative history of Law 9-248. — For legislative history of D.C. Law 9-248, see Historical and Statutory Notes following § 32-1001.

Subchapter II. Repealed Provisions.

§§ 32-1031 to 32-1049. Findings and declaration of policy; definitions; minimum wage and overtime compensation; workweek; wage orders; exemptions of certain employees from minimum wage and overtime provisions; powers and duties of Mayor; investigations; statements from employers; reconsideration and revision of wage orders; ad hoc committees; committee reports of findings and recommendations; failure to report; issuance of revised wage orders; notice and hearing; notice and effective date of orders; contents of orders; restrictions; council to make regulations; judicial review of orders; stay pending determination of proceedings; Mayor authorized to take testimony and issue subpoenas; records of employers; availability for inspection; statements to employees; posting of law and wage orders; Mayor to furnish copies; unlawful acts; penalties for violation of § 36-213; jurisdiction; prosecutions; liability of employer; liquidated damages; attorney fees and costs; assignment of claim; supervision of payment; statute of limi-

tations; right of collective bargaining; severability; short title. [Repealed].

Repealed.

(Mar. 25, 1993, D.C. Law 9-248, § 18, 40 DCR 761.)

Prior Codifications. — 1981 Ed., §§ 36-201 to 36-219.

Chapter 11. Occupational Safety and Health.

Sec.
32-1101. Definitions.
32-1102. Applicability to employment in workplaces.
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32-1116. Judicial review and enforcement.
32-1117. Nondiscrimination.
32-1118. Procedures to counteract imminent danger.
32-1119. Confidentiality of trade secrets.
32-1120. Civil penalties.
32-1121. Criminal penalties.
32-1122. Action against District government.
32-1123. Establishment of Office of Occupational Safety and Health; promulgation of rules and regulations.
32-1124. Applicability.

§ 32-1101. Definitions.

For the purposes of this chapter, the term:

(1) "Authorized employee representative" means a person or persons selected and authorized by the employee or employees of a workplace to assist or represent the employee or employees in exercising their rights under the provisions of this chapter.

(2) "Board" means the District of Columbia Occupational Safety and Health Board established by § 32-1105.

(3) "Commission" means the District of Columbia Occupational Safety and Health Commission established by § 32-1106.

(4) "District" means the District of Columbia.

(5) "Employee" means an individual working for an employer for a salary, wage, or other compensation or pursuant to any other contractual obligation, but does not include domestic servants.

(6) "Employer" means any person, firm, corporation, partnership, stock association, agent, manager, representative, foreman, or any other person having control or custody of any place of employment or of any employee. The term "employer" shall include a District government or quasi-governmental agency and an entity established pursuant to interstate compact. The term "employer" shall not include the United States government or its agencies.

(7) "Federal Act" means the Occupational Safety and Health Act of 1970, approved December 29, 1970 (84 Stat. 1590; 29 U.S.C. § 651 et seq.).

(8) "Inspection" means an examination of a workplace on a routine basis.

(9) "Investigation" means an examination of a specific hazard, accident, injury, or death.

(10) "Plan" means the occupational safety and health plan for the District provided for in § 32-1104.

(11) "Secretary" means the Secretary of the United States Department of Labor.

(12) "Standard" means an occupational safety and health standard that requires conditions or the adoption or use of 1 or more practices, means,

methods, operations, or processes that are reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(Mar. 16, 1989, D.C. Law 7-186, § 2, 35 DCR 8250.)

Prior Codifications. — 1981 Ed., § 36-1201.

Legislative history of Law 7-186. — Law 7-186, "the District of Columbia Occupational Safety and Health Act of 1988," was introduced in Council and assigned Bill No. 7-28, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on September 27, 1988, and October 11, 1988, respectively. Approved without the signature of the Mayor on November 2, 1988, it was assigned Act No. 7-245 and transmitted to both Houses of Congress for its review.

§ 32-1102. Applicability to employment in workplaces.

(a) Except as otherwise provided in this section, this chapter shall apply to employment performed in any workplace in the District.

(b) This chapter shall not apply to the premises of an establishment of the United States government unless the physical premises are controlled by an independent contractor.

(c) Nothing in this chapter shall apply to working conditions of employees whose occupational safety and health is protected by the Atomic Energy Act of 1954 (42 U.S.C. § 2011 et seq.), or with respect to which the United States government exercises exclusive jurisdiction for purposes of occupational safety and health.

(Mar. 19, 1989, D.C. Law 7-186, § 3, 35 DCR 8250.)

Section references. — This section is referred to in § 32-1124.

Prior Codifications. — 1981 Ed., § 36-1202.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Editor's notes. — Section effective: Section 26 (a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1103. Duties of employer and employees.

(a) Each employer shall:

(1) Furnish employees with a place and conditions of employment that are free from recognized hazards that may cause or are likely to cause death or serious physical harm or illness to the employees; and

(2) Comply with all occupational safety and health rules promulgated and orders issued pursuant to this chapter.

(b) Each employee shall comply with all occupational safety and health rules promulgated and orders issued pursuant to this chapter which are applicable to the actions and conduct of the employee.

(Mar. 16, 1989, D.C. Law 7-186, § 4, 35 DCR 8250.)

Section references. — This section is referred to in §§ 32-1114, 32-1120, and 32-1124.

Prior Codifications. — 1981 Ed., § 36-1203.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Editor's notes. — Section effective: Section 26 (a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1101, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1104. Occupational safety and health plan.

Within 1 year from March 16, 1989, and pursuant to § 18 of the Federal Act [29 U.S.C. § 667], the Mayor shall adopt and submit to the Secretary an occupational safety and health plan. The plan shall be consistent with the provisions of this chapter and shall be at least as effective in ensuring safety and healthful workplaces and conditions of employment as the agreements, contracts, standards, rules, and regulations made or promulgated pursuant to the Federal Act.

(Mar. 16, 1989, D.C. Law 7-186, § 5, 35 DCR 8250.)

Section references. — This section is referred to in § 32-1101.

Prior Codifications. — 1981 Ed., § 36-1204.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

References in text. — "Section 18 of the Federal Act," referred to in the first sentence, is 29 U.S.C. § 667.

§ 32-1105. District of Columbia Occupational Safety and Health Board.

(a) There is established within the executive branch of the District, a District of Columbia Occupational Safety and Health Board. The Board shall be composed of 7 members appointed by the Mayor, with the advice and consent of the Council from among those residents of the District who by reason of training, education, or experience are qualified to carry out the functions of the Board.

(b) The Board shall:

(1) Promulgate occupational safety and health standards in accordance with § 32-1108;

(2) Determine variances in accordance with §§ 32-1110 and 32-1111; and

(3) Adopt rules of procedure to govern its orderly operation and the orderly operation of the Commission in accordance with the subchapter I of Chapter 5 of Title 2.

(c) Except as provided in subsection (d) of this section, each member of the Board shall be appointed for a term of 3 years.

(d)(1) The Mayor shall designate a Chairperson of the Board to serve for a term of 3 years.

(2) Two persons shall be appointed from the private sector to represent management, 1 for an initial term of 3 years and 1 for an initial term of 1 year.

(3) Two persons shall be appointed from the private sector to represent labor, 1 for an initial term of 3 years and 1 for an initial term of 1 year.

(4) One person shall be appointed from the public management sector to represent management for an initial term of 2 years.

(5) One person shall be appointed from the public labor sector to represent labor for an initial term of 2 years.

(e) The composition of the Board shall be representative of the working age population of the District in terms of race, ethnic origin, and sex.

(f) Whenever a vacancy on the Board occurs before the end of a term, the Mayor, with the advice and consent of the Council, shall appoint a person to complete the remainder of that term.

(g) The Mayor shall submit nominations to the Board to the Council within 60 days of the date of approval of the plan. The Board shall begin operation when a majority of the members are sworn in. A majority of the members shall constitute a quorum. A quorum is necessary to conduct the business of the Board.

(h) A member of the Board may continue to serve after the expiration of that member's term until a successor is appointed and sworn into office.

(i) The Mayor may remove a member of the Board for incompetence, misconduct, or neglect of duty, after notice to the member.

(Mar. 16, 1989, D.C. Law 7-186, § 6, 35 DCR 8250.)

Section references. — This section is referred to in §§ 32-1101, 32-1106, 32-1107, and 32-1124.

Prior Codifications. — 1981 Ed., § 36-1205.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 7-186, the "District of Columbia Occupational Safety and Health Act of 1988", see Mayor's Order 89-121, May 31, 1989.

Editor's notes. — Section effective: Section 26(a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1106. Occupational Safety and Health Commission.

(a) There is established an Occupational Safety and Health Commission. The Chairperson of the Board or a designee of the Chairperson of the Board shall serve as Chairperson of the Commission. The Chairperson of the Board, 1 labor and 1 management Board member shall serve on the Commission. When the issue is related to employee health, the Commissioner of Public Health or his or her designee shall serve on the Commission as a non-voting member. Members of the Board, other than the Chairperson, shall serve on a rotation basis pursuant to rules established by the Board under § 32-1105(b)(3).

(b) For purposes of carrying out the functions of the Commission, the Commission may operate in panels of 3 members each. Two members of the Commission shall constitute a quorum and any official decision or action shall be made only on the affirmative vote of at least 2 members.

(c) The Commission:

(1) May consider an appeal of any decision or order of the Mayor rendered pursuant to § 32-1115 and may sustain, reverse, modify, or vacate the decision or order of the Mayor or remand the case to the Mayor for further proceedings; and

(2) Shall determine whether the prohibition against discharge or discrimination under § 32-1117 has been violated, issue a decision and order on any violation of § 32-1117 and order all appropriate relief, including rehiring or reinstating the employee to the former position of the employee with back pay.

(d) The Commission shall conduct proceedings in accordance with rules established by the Board pursuant to § 32-1105(b)(3).

(e) Members of the Board and Commission shall be compensated at a rate to be established by the Mayor in accordance with § 1-611.08. No compensation shall be paid to members who are otherwise employed by the District government.

(Mar. 16, 1989, D.C. Law 7-186, § 7, 35 DCR 8250; Mar. 24, 1998, D.C. Law 12-81, § 49, 45 DCR 745.)

Section references. — This section is referred to in §§ 32-1101, 32-1107, and 32-1124.

Prior Codifications. — 1981 Ed., § 36-1206.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Editor's notes. — Section effective: Section 26 (a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1107. Powers of administration and enforcement.

(a) Except as provided in §§ 32-1105, 32-1106, and 32-1117, the Mayor shall administer and enforce the provisions of this chapter and may, consistent with the provisions of this chapter, delegate any power or authority to a designee of the Mayor.

(b) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement the provisions of this chapter.

(c) The Mayor shall provide consultative services for employers pursuant to rules promulgated by the Mayor.

(d) The Mayor shall, either directly or through grants or contracts:

(1) Conduct educational and training programs to ensure the availability of skilled manpower necessary to carry out the provisions of this chapter, including short-term training of present employees;

(2) Establish and conduct programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe and unhealthful conditions in workplaces subject to this chapter;

(3) Consult with employers, employees, and their respective organizations on the development and staffing of preventive programs; and

(4) Conduct research and undertake demonstrations relating to occupational safety and health matters.

(e) The Mayor shall, to the extent required by the Federal Act, submit

reports to the Secretary of Labor in the form and including any information that the Secretary of Labor may require.

(Mar. 16, 1989, D.C. Law 7-186, § 8, 35 DCR 8250.)

Section references. — This section is referred to in § 32-1124.

Prior Codifications. — 1981 Ed., § 36-1207.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 7-186, the "District of Columbia Occupational Safety and Health Act of 1988", see Mayor's Order 89-121, May 31, 1989.

Editor's notes. — Section effective: Section 26(a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1108. Occupational safety and health standards.

(a) Whenever an occupational safety and health standard is in effect under section 4(b)(2) [29 U.S.C. § 653(b)(2)] or section 6 [29 U.S.C. § 655] of the Federal Act, the Board may adopt the standard as the applicable standard for the District by publishing the standard as a rule in accordance with subchapter I of Chapter 5 of Title 2.

(b) Whenever, in the discretion of the Board, it is necessary and proper to promulgate a standard pertaining to an occupational safety and health issue for which there is no established federal standard, or when the Board considers a rule that is different from, but at least as effective as a comparable federal standard and that is necessary to better effectuate the purposes of this chapter, the Board may promulgate, modify, or revoke the occupational safety and health standard in the following manner:

(1) The Board shall publish the proposed standard in the District of Columbia Register and afford interested persons, including employees or their representatives, a period of 30 days after publication of the standard in which to submit to the Board written comments. On or before the final day of the publication period, any interested person may file with the Board written objections to the proposed standard, stating the grounds for objection. The Board shall hold a public hearing upon any objection to a proposed standard and request for public hearing by publishing, within 30 days after the final day for filing objections, a notice in the District of Columbia Register specifying the time and place of the hearing.

(2) Within 60 days after the expiration of the period provided for the submission of written comments under paragraph (1) of this subsection or, if a hearing is held, within 60 days after completion of the hearing, the Board shall issue a rule promulgating, modifying, or revoking a safety or health standard or make a determination that a rule shall not be issued. The rule shall be published in accordance with subchapter I of Chapter 5 of Title 2. The rule may contain a provision delaying its effective date for a period of not more than 60 days to ensure that affected employers and employees are informed of the existence of the rule, its terms, and that affected employers have an opportunity to familiarize themselves and their employees with the existence and terms of the rule.

(3) Whenever practicable, a rule promulgated pursuant to this subsection shall be based upon consideration of the highest safety and health protection standards for the employee, the latest available scientific data in the field, the feasibility of the standards, and experience gained from implementing this and other health and safety laws. In promulgating a rule on toxic materials or harmful physical agents pursuant to this subsection, the Board shall promulgate a rule that most adequately assures, to the extent feasible on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity, even if the employee has regular exposure to the toxic materials or physical agent throughout the working life of the employee. Whenever practicable, the rule promulgated shall be expressed in terms of objective criteria and the performance desired.

(c) Any rule applicable to products distributed or used in interstate commerce shall be identical to the comparable federal standard, unless a variation from the federal standard is required by compelling local conditions and the variation does not unduly burden interstate commerce.

(d) Any rule promulgated by the Board pursuant to this chapter shall prescribe, wherever necessary, all means of informing employees of the hazards to which they are exposed, and require:

(1) Labels and other appropriate forms of warning to ensure that workers understand the nature of the hazards to which they are exposed and precautions for safe use and exposure;

(2) Suitable protective equipment where needed, but not as a substitute for appropriate control techniques;

(3) Suitable technological and control techniques;

(4) Monitoring or measuring employee exposure to toxic materials or harmful physical agents at locations and intervals sufficient to afford protection;

(5) Where appropriate, medical examinations at no cost to the employee, with the results made available to the Mayor and to the Commission when necessary to administer or enforce the provisions of this chapter and to the employee or, at the request of the employee, to the physician of the employee; and

(6) Posting of notices or use of other appropriate means to inform employees of protections and obligations under this chapter, including applicable occupational safety and health rules.

(e) Whenever objections are made to a standard proposed for adoption under subsection (b) of this section, the rule promulgated shall be based upon the record. A person who may be adversely affected by a rule promulgated under paragraph (b)(1) or (2) of this section or under § 32-1109(a) may, at any time prior to 60 days after the rule is promulgated, file a petition challenging the validity of the rule with the District of Columbia Court of Appeals. The filing of the petition shall not, unless ordered by the court, operate as a stay of the rule. The determinations of the Board shall be conclusive if supported by substantial evidence in the record.

(Mar. 16, 1989, D.C. Law 7-186, § 9, 35 DCR 8250.)

Section references. — This section is referred to in §§ 32-1105, 32-1109, 32-1113, 32-1114, 32-1120, 32-1121, and 32-1124.

Prior Codifications. — 1981 Ed., § 36-1208.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

References in text. — "Section 4(b)(2) or section 6 of the Federal Act" referred to in (a), is 29 U.S.C. § 653 or 29 U.S.C. § 655, respectively.

Editor's notes. — Section effective: Section 26(a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1109. Emergency temporary rules.

(a) The Board may adopt an emergency temporary rule pursuant to § 2-505(c) whenever an emergency temporary rule is issued pursuant to the Federal Act or whenever the Board determines:

(1) That employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and

(2) That an emergency temporary rule is necessary to protect employees from that danger.

(b) When an emergency temporary rule promulgated under the Federal Act has been adopted as an emergency temporary rule by the Board, the rule shall be effective until both the Secretary and the Board have either withdrawn the emergency temporary rule or promulgated a permanent rule superceding the temporary rule, but in no instance shall the rule remain in effect for longer than 120 calendar days.

(c) When the Board has provided for an emergency temporary rule not promulgated under the Federal Act, the rule shall be effective until superceded by a rule promulgated in accordance with § 32-1108(b) or until a determination is made that no rule shall be promulgated, but in no instance shall the rule remain in effect for longer than 120 calendar days.

(d) Notice shall not be a prerequisite to the enforcement of an emergency temporary rule by the Mayor.

(Mar. 16, 1989, D.C. Law 7-186, § 10, 35 DCR 8250.)

Section references. — This section is referred to in §§ 32-1108, 32-1114, 32-1120, 32-1121, and 32-1124.

Prior Codifications. — 1981 Ed., § 36-1209.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Editor's notes. — Section effective: Section 26(a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1110. Temporary variances; application for temporary order.

(a) An employer may apply to the Board for a temporary order granting a variance from a rule or a provision of a rule promulgated pursuant to this chapter. The temporary order shall be granted only if the employer files an

application that meets the requirements of subsection (c) of this section and establishes that:

(1) The employer is unable to comply with the rule by its effective date because of the unavailability of professional or technical personnel or materials and equipment needed to come into compliance with the rule or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) The employer is taking all available steps to safeguard the employees of the employer against the hazards covered by the rule which is the subject of the variance; and

(3) The employer has an effective program for coming into compliance with the rule as quickly as practicable.

(b) A temporary order issued pursuant to subsection (a) of this section shall prescribe the practices, means, methods, operations, and processes that the employer must adopt and use while the temporary order is in effect and state, in detail, the employer's program for coming into compliance with the rule. The temporary order may be granted only after notice to the employees of the employer requesting the variance and after there has been an opportunity for a hearing. The Board may issue 1 interim temporary order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the rule or 1 year, whichever is shorter. A temporary order may be renewed not more than twice if the requirements of this section are met and if an application for renewal is filed at least 90 days prior to the expiration date of the temporary order. No interim temporary order renewal may remain in effect for more than 180 days.

(c) An application for a temporary order shall contain:

(1) A specification of the rule or portion of the rule from which the employer seeks a variance;

(2) A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that the employer is unable to comply with the rule or portion of the rule and a detailed statement of the reasons for the inability to comply;

(3) A statement of the steps that the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the rule;

(4) A statement of when the employer expects to be able to comply with the rule and the steps the employer has taken and will take, with specific dates, to come into compliance with the rule; and

(5) Certification describing how the employees of the employer have been informed of the pending application, that the employees have been informed of their right to petition the Board for a hearing, and that the employees have been informed of the application by:

(A) Providing a copy of the application to the authorized representative of the employee;

(B) Posting a summary of the application at a place that notices to employees are normally posted specifying where a copy of the complete application may be examined; and

(C) Other appropriate means.

(d) The Board is authorized to grant a variance from a rule or portion of a rule whenever the Board determines that a variance is necessary to permit an employer to participate in an experiment approved by the employer and designed to demonstrate or validate new and improved techniques to safeguard the safety or health of employees.

(Mar. 16, 1989, D.C. Law 7-186, § 11, 35 DCR 8250.)

Section references. — This section is referred to in §§ 32-1105, 32-1114, 32-1120, 32-1121, and 32-1124.

Prior Codifications. — 1981 Ed., § 36-1210.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Editor's notes. — Section effective: Section 26(a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1111. Permanent variances.

(a) An affected employer may apply to the Board for a permanent variance from a rule promulgated under this chapter. The employer shall provide to affected employees notice of each application and an opportunity to participate in a hearing. The Board shall issue the requested variance if the Board determines, on the record after there has been an opportunity for an inspection and, where appropriate, a hearing, that the proponent of the variance has demonstrated, by a preponderance of the evidence, that the conditions, practices, means, methods, operations, or processes used or proposed to be used by the employer will provide conditions and places of employment that are as safe and healthful as those that would prevail if the employer complied with the rule.

(b) The variance issued by the Board shall prescribe the conditions the employer must maintain and the practices, means, methods, operations, and processes that the employer must adopt and utilize to the extent that they differ from the rule in question. The Board may modify or revoke the variance upon application by an employer, employee, or by the Board on its own motion, in the manner prescribed for its issuance under this section at any time after 6 months of its issuance.

(Mar. 16, 1989, D.C. Law 7-186, § 12, 35 DCR 8250.)

Section references. — This section is referred to in §§ 32-1105, 32-1114, 32-1120, 32-1121, and 32-1124.

Prior Codifications. — 1981 Ed., § 36-1211.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Editor's notes. — Section effective: Section 26(a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1112. Inspection and investigations.

(a) In order to carry out the purposes of this chapter, the Mayor, upon presenting appropriate credentials to the employer, is authorized, consistent with constitutional guidelines to:

(1) Enter without delay and at reasonable times, a workplace, where work is performed by an employee of an employer; and

(2) Inspect or investigate during regular work hours, at other reasonable times, within reasonable limits, and in a reasonable manner any place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, records of injuries, illnesses, and exposure to toxic materials and harmful physical agents and to question privately any person having control or custody of the workplace.

(b) The Mayor may administer oaths and require, by subpoena, the testimony of witnesses and the production of all books, registers, and other evidence relative to an inspection or investigation. The Mayor shall prescribe, by rule, fees and mileage to be paid to witnesses. The employer shall not deny regular pay or benefits to an employee subpoenaed by the Mayor as a witness. In case of failure to comply with a subpoena, the Mayor may invoke the aid of the Superior Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of evidence. In the case of contumacy or refusal to obey a subpoena, the court may issue an order requiring an appearance before the court, the production of evidence, and testimony regarding the matter in question. Failure to obey the court order may be punished by the court as contempt.

(c) The employer or a representative of the employer and an employee or an authorized representative of the employee shall be given an opportunity to accompany the Mayor during the physical inspection or investigation of the place of employment to aid in any inspection or investigation of the place of employment. An employee participating in an inspection pursuant to this subsection shall not be subject to wage deduction for a reasonable amount of time spent in connection with the inspection. When there is no employee or authorized employee representative, the Mayor shall consult with a reasonable number of employees concerning occupational safety and health matters in the workplace.

(d) Any person who believes that a violation of an occupational safety and health rule exists, that a violation of this chapter has occurred that threatens physical harm, or that an imminent danger exists may, at any time, request an inspection or investigation by giving notice to the Mayor of the suspected violation or danger. Notice may be given orally or in writing, and shall identify with reasonable particularity the suspected violation or danger.

(e) Notice, including a summary statement prepared by the Mayor setting forth the alleged violation, shall be provided to the employer or the agent of the employer no earlier than at the time of inspection or investigation, unless earlier notice is ordered by the Mayor for good cause. The name of the person or employees referred to in the request for inspection or investigation shall not appear in the notice to the employer or on any record published, released, or made available pursuant to this chapter.

(f) If upon receipt of notice, the Mayor determines that there is reason to believe that a violation or danger exists, the Mayor shall make an inspection or investigation in accordance with the provisions of this section, as soon as practicable, to determine if the violation or danger exists. If the Mayor determines that there is no reason to believe that a violation or danger exists, the Mayor shall notify the person who requested the inspection or investigation, if known, or the authorized representative of the person who requested the inspection or investigation, and provide a written statement of the final disposition of the case and the reasons.

(Mar. 16, 1989, D.C. Law 7-186, § 13, 35 DCR 8250.)

Section references. — This section is referred to in § 32-1124.

Prior Codifications. — 1981 Ed., § 36-1212.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Editor's notes. — Section effective: Section 26(a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1113. Recordkeeping and reporting.

(a) Each employer shall make, keep, preserve, and make available to the Mayor any records relating to this chapter that the Mayor may require, by rule, for the enforcement of this chapter or for the development of information regarding the causes and prevention of occupational accidents and illnesses. The rules may include provisions requiring employers to conduct periodic inspections.

(b) The Mayor shall promulgate rules requiring employers to maintain accurate records of and to make periodic reports on work-related deaths, injuries, and illnesses, other than minor injuries requiring minimal treatment, regardless of whether minor injuries are reportable under Chapter 15 of Title 32.

(c) All employers, to the extent required by the Federal Act, shall maintain records and make reports to the Secretary of Labor in the same manner and to the same extent that would be required if no state plan were in effect under 29 U.S.C. § 667(c).

(d) The Mayor shall promulgate rules to require employers to maintain accurate records of employee exposure to any potentially toxic materials or harmful physical agents required to be monitored or measured under § 32-1108. The rules shall provide employees or other authorized representatives the right to observe the monitoring or measuring of potentially toxic materials or harmful physical agents and to access to the records. The rules shall make appropriate provisions for each employee, former employee, or the authorized representative of the employee or former employee to have access to the records on the exposure of the employee or former employee to toxic materials or harmful physical agents and to periodic summaries and other records required to be kept in the workplace under this chapter, except medical records of other employees and former employees. Information contained in records

and reports concerning employee exposure to toxic substances may be made public and disseminated to employers, employees, or other representative organizations without disclosure of the name of individual who is the subject of the physical examination or special study.

(e) Each employer shall promptly notify each employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels that exceed those prescribed by an applicable occupational safety and health rule promulgated under this chapter. Each employer shall promptly undertake to reduce the exposure to compliance levels and inform each employee who is being exposed of the corrective action being taken.

(f) Each employer shall notify the Mayor, within 24 hours, of an accident or occurrence that causes the death of an employee or a life threatening injury requiring the hospitalization of an employee.

(g) Each employer shall submit to the Mayor, within 10 days from the date of an injury or the date that the employer has knowledge of a disease or infection resulting from an injury, a duplicate copy of the report required to be made pursuant to § 32-808(c).

(Mar. 16, 1989, D.C. Law 7-186, § 14, 35 DCR 8250.)

Section references. — This section is referred to in § 32-1124.

Prior Codifications. — 1981 Ed., § 36-1213.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

References in text. — The repeal of "§ 32-808(c)", referred to in (g), is provided for by D.C. Law 7-186, § 25.

Editor's notes. — Section effective: Section 26 (a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1114. Citations.

(a) If, upon an inspection or investigation, the Mayor believes that an employer has violated a requirement of § 32-1103 or a rule or order promulgated pursuant to § 32-1108, § 32-1109, § 32-1110, or § 32-1111, the Mayor shall, after completion of the inspection or investigation, issue a citation to the employer in accordance with subsection (e) of this section. The citation shall be served on the employer in person or by certified mail. The Mayor may prescribe procedures for the issuance of a notice instead of a citation for minor violations that have no direct or immediate relationship to safety or health.

(b) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the act, rule, or order alleged to have been violated. The Mayor shall, by rule, prescribe reasonable time periods for the abatement of violations and each citation shall fix a time period for abatement in accordance with the rules. Each citation shall specify that the employer has 15 working days, excluding the date of receipt, Saturdays, Sundays, and legal holidays, to notify the Mayor that the employer intends to contest the citation, abatement period, or proposed penalty, if any.

(c) If a civil penalty is proposed to be assessed under § 32-1120, the Mayor shall, concurrently with the issuance of a citation, issue a notice including a reference to the provision of this chapter or rule identifying the proposed penalty and the amount of the proposed penalty.

(d) Each citation issued under this section shall be prominently posted, as prescribed in rules issued by the Mayor, at or near each place of the violation referred to in the notice. Each citation shall be posted immediately upon issuance and, unless otherwise required by rule, shall remain posted until the violation has been abated.

(e) No citation may be issued more than 3 months following the discovery of a violation by the Mayor.

(Mar. 16, 1989, D.C. Law 7-186, § 15, 35 DCR 8250.)

Section references. — This section is referred to in §§ 32-1115, 32-1120, and 32-1124.

Prior Codifications. — 1981 Ed., § 36-1214.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Editor's notes. — Section effective: Section 26 (a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1115. Procedure for enforcement.

(a) If, within the time period following service of a citation specified in § 32-1114, the employer fails to notify the Mayor that the employer intends to contest the citation or proposed penalty and no notice is filed by an employee or representative of the employee under subsection (c) of this section within the time specified, the citation and the notice of the proposed penalty shall be deemed a final order of the Mayor, not subject to administrative or judicial review.

(b) If the Mayor has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction, the Mayor shall notify the employer, by certified mail or by service as prescribed in § 32-1114, of the failure, the proposed penalty under § 32-1120, and that the employer has the time period specified in § 32-1114 within which to notify the Mayor that the employer wishes to contest the citation or the proposed penalty. If, within that time period, the employer fails to notify the Mayor that the employer intends to contest the citation or the proposed penalty, the citation and proposed penalty shall be deemed a final order of the Mayor, not subject to administrative or judicial review.

(c) If an employer notifies the Mayor that the employer intends to contest a citation or a proposed penalty issued under § 32-1114 or notification issued under subsection (b) of this section or if, within the time period specified in § 32-1114 following the issuance of a citation, an employee or employee representative files notice with the Mayor alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Mayor shall immediately afford the employer or employee an opportunity for a hearing and issue a decision and an order based on findings of fact and

conclusions of law affirming, modifying, or vacating the citation issued by the Mayor, the time fixed in the citation for the abatement of the violation, or the proposed penalty or directing other appropriate relief. Upon a showing by an employer of a good-faith effort to comply with the abatement requirements of a citation and that abatement has not been completed because of factors beyond the reasonable control of the employer, the Mayor, after an opportunity for a hearing has been provided in accordance with this subsection, shall issue a decision and an order affirming or modifying the abatement requirement in the citation. The rules of procedure prescribed by the Mayor shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings conducted under this subsection.

(d) The decision and order of the Mayor shall become the final decision and order unless the employer, employee, or representative of the employer or employee files an appeal with the Commission within 30 days after service of the decision or order. The Commission may review the record for error and each party shall be afforded an opportunity to present argument, either orally or in writing as the Commission may prescribe. The Commission shall provide a copy of its decision to each party or the party's representative of record. The Commission may sustain, reverse, modify, or vacate the decision or order of the Mayor or remand the case to the Mayor for further proceedings.

(e) The period for correction of a violation shall not begin to run until the entry of a final order by the Commission, if the employer initiates review proceedings under this section in good faith.

(Mar. 16, 1989, D.C. Law 7-186, § 16, 35 DCR 8250.)

Section references. — This section is referred to in §§ 32-1106, 32-1116, 32-1122, and 32-1124.

Prior Codifications. — 1981 Ed., § 36-1215.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Editor's notes. — Section effective: Section 26 (a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1116. Judicial review and enforcement.

(a) Within 60 days of the issuance of a decision or order by the Commission or the issuance of a final order of the Mayor when the Commission does not review a decision or order of the Mayor, an employer, employee, or representative of an employee, suffering a legal wrong or adversely affected or aggrieved by an order or decision of the Commission or an employer, employee, or representative of an employee adversely affected or aggrieved by a final order or decision of the Mayor when the Commission does not review a decision or order is entitled to review by the District of Columbia Court of Appeals in accordance with § 2-510. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission or the final order of the Mayor when the Commission does not review a decision or order.

(b) If no appeal is taken as prescribed in subsection (a), upon the conclusion

of judicial appellate proceeding where a stay has not been granted to the Commission, when the Mayor is upheld by the court when the Commission does review a decision or order, upon the final order of the Mayor when the Commission does review a final decision or order of the Mayor, or when a citation is not contested, the Mayor may apply to the Superior Court to enforce any abatement requirement prescribed. Failure to comply with the abatement order may be punished by the court as contempt. In a contempt proceeding the court may assess the penalties provided in § 32-1120 in addition to other available remedies.

(c) When a penalty has been assessed or imposed by the Mayor under § 32-1115 but not paid and no timely appeal is taken by an affected party under subsection (a) of this section, upon the conclusion of judicial appellate proceedings in which the Commission or the final order of the Mayor, when the Commission does review the decision or order, is upheld, or where a citation is not contested, the Mayor may file a certified copy of the final order with the Superior Court. Upon notice to the parties, as prescribed by rules issued pursuant to this chapter, the court shall enter judgment. The judgment and all proceedings in relation to it shall have the same effect as a judgment entered in a civil action in the Superior Court.

(Mar. 16, 1989, D.C. Law 7-186, § 17, 35 DCR 8250.)

Section references. — This section is referred to in §§ 32-1122 and 32-1124.

Prior Codifications. — 1981 Ed., § 36-1216.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Editor's notes. — Section effective: Section 26(a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1117. Nondiscrimination.

(a) No person shall discharge or discriminate against an employee because an employee has filed a complaint, instituted or caused to be instituted a proceeding pursuant to this chapter, testified or is about to testify in a proceeding, exercised a right afforded by this chapter on behalf of the employee or others, or performed any duty pursuant to this chapter.

(b) An employee who believes that he or she has been discharged or otherwise discriminated against in violation of subsection (a) of this section may, within 60 days after the violation, file a complaint with the Commission alleging discrimination. Upon receipt of the complaint, the Chairperson of the Commission shall order an investigation and provide an opportunity for the parties to present evidence to the Commission. If the Commission determines that subsection (a) of this section has been violated, the Commission shall issue a decision and order requiring the person who committed the violation to take necessary and appropriate affirmative action to abate the violation, including rehiring or reinstating the employee to his or her former position with back pay.

(c) Within 90 days of the receipt of a complaint filed under this section, the

Commission shall notify the complainant of the determination of the Commission pursuant to subsection (b) of this section.

(d) An employer or employee aggrieved by a decision rendered by the Commission pursuant to this action is entitled to review by the District of Columbia Court of Appeals in accordance with § 2-510.

(e) No employee shall be discharged or otherwise disciplined for refusal to perform work that the employee believes creates a dangerous situation that could cause harm to the physical health or threatens the safety of the employee or another employee, for which the employee is inadequately trained, or under conditions which are in violation of the health and safety rules of the District or federal health and safety or environmental laws.

(Mar. 16, 1989, D.C. Law 7-186, § 18, 35 DCR 8250.)

Section references. — This section is referred to in §§ 32-1106, 32-1107, and 32-1124.

Prior Codifications. — 1981 Ed., § 36-1217.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Editor's notes. — Section effective: Section 26(a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1118. Procedures to counteract imminent danger.

(a) The Superior Court shall, upon petition of the Mayor, restrain or enjoin conditions or practices in any place of employment which are a danger and could reasonably be expected to cause death or serious physical harm either immediately or before the imminence of danger can be eliminated through enforcement procedures otherwise provided for by this chapter. The court may require steps to be taken to avoid, correct, or remove the imminent danger. The court may prohibit the employment or presence of an individual in locations or under conditions where imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger, or to maintain operation, resume normal operations without a complete cessation of operations, or to permit the cessation of operations to be accomplished in a safe and orderly manner when cessation of operations is necessary.

(b) Upon the filing of a petition, the Superior Court may grant permanent injunctive relief or a temporary restraining order pending the outcome of an enforcement proceeding instituted pursuant to this chapter. No temporary restraining order issued without notice shall be effective for more than 5 days.

(c) The Mayor shall, immediately upon concluding that conditions or practices described in subsection (a) of this section exist in a place of employment, inform the affected employees and employers of the danger and that relief is being sought.

(d) If the Mayor arbitrarily or capriciously fails to seek relief under this section, an employee or employee representative who may be injured by reason of the failure may seek a writ of mandamus in the Superior Court to compel the Mayor to seek an order of relief and any further relief that may be appropriate.

(Mar. 16, 1989, D.C. Law 7-186, § 19, 35 DCR 8250.)

Section references. — This section is referred to in § 32-1124.

Prior Codifications. — 1981 Ed., § 36-1218.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Editor's notes. — Section effective: Section 26 (a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1119. Confidentiality of trade secrets.

All information reported to or otherwise obtained by the Mayor or the Commission in connection with an inspection, investigation, or proceeding under this chapter which contains or which might reveal a trade secret, shall be considered confidential, except that information may be disclosed to other officers or employees when necessary to administer or enforce this chapter. The Mayor, Commission, or court shall issue orders to protect the confidentiality of trade secrets.

(Mar. 16, 1989, D.C. Law 7-186, § 20, 35 DCR 8250.)

Section references. — This section is referred to in § 32-1124.

Prior Codifications. — 1981 Ed., § 36-1219.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Editor's notes. — Section effective: Section 26 (a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1120. Civil penalties.

(a) An employer who willfully or repeatedly violates the requirement of § 32-1103, a rule promulgated or order issued pursuant to § 32-1108, § 32-1109, § 32-1110, or § 32-1111, or any other rule promulgated pursuant to this chapter, may be assessed a civil penalty of not more than $10,000 for each violation.

(b) An employer who has received a citation for a serious violation, as set forth in subsection (g) of this section, of the requirements of § 32-1103, a rule promulgated or order issued pursuant to § 32-1108, § 32-1109, § 32-1110, or § 32-1111, or any other rule promulgated pursuant to this chapter, shall be assessed a civil penalty of not more than $1,000 for each violation.

(c) An employer who has received a citation for a violation of the requirements of § 32-1103, a rule promulgated or order issued pursuant to § 32-1108, § 32-1109, § 32-1110, or § 32-1111, or any other rule promulgated pursuant to this chapter, when the violation is determined not to be a serious violation, may be assessed a civil penalty of up to $1,000 for each violation.

(d) An employer who fails to correct a violation for which a citation has been issued pursuant to § 32-1114(a) within the period permitted for its correction may be assessed a civil penalty of not more than $1,000 for each day a failure or violation continues.

(e) An employer who violates posting or reporting requirements of this chapter shall be assessed a civil penalty of up to $1,000 for each violation.

(f) The Mayor shall, in accessing civil penalties pursuant to this chapter, consider the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, the history of previous violations, and whether the employer, with the exercise of reasonable diligence, knew or could have known of the presence and seriousness of the violation.

(g) A serious violation shall be deemed to exist in a workplace if there is a substantial probability that death or serious physical harm could result from a condition which exists or from 1 or more practices, means, methods, operations, or processes which have been adopted or are in use in the workplace, unless the employer did not know or could not, with the exercise of due diligence, know of the presence of the violation.

(h) Civil penalties owed pursuant to this chapter shall be paid to the District of Columbia Treasurer for deposit in the General Fund. In addition to any other remedy authorized by law, penalties may be recovered in a civil action in the name of the District government in Superior Court.

(Mar. 16, 1989, D.C. Law 7-186, § 21, 35 DCR 8250.)

Section references. — This section is referred to in §§ 32-1114 to 32-1116, 32-1122, and 32-1124.

Prior Codifications. — 1981 Ed., § 36-1220.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Editor's notes. — Section effective: Section 26 (a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1121. Criminal penalties.

(a) An employer who willfully violates a rule promulgated or order issued pursuant to § 32-1108, § 32-1109, § 32-1110, or § 32-1111 or any other rule promulgated pursuant to this chapter, and that violation causes death to an employee, the employer, shall, upon conviction, be subject to a fine of not more than $10,000, imprisonment for not more than 6 months, or both. If the conviction is for a second violation of a rule or order referenced in this section, the employer shall be fined not more than $20,000, imprisoned for not more than 1 year, or both.

(b) A person who gives advance notice of an inspection to be conducted under this chapter, without authority from the Mayor, shall, upon conviction, be fined not more than $1,000, imprisoned for not more than 6 months, or both.

(c) Whoever knowingly makes a false statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be fined not more than $10,000, imprisoned for not more than 6 months, or both.

(d) Prosecutions brought pursuant to this section shall be in the name of the District of Columbia upon information filed in the Superior Court by the Corporation Counsel.

(Mar. 16, 1989, D.C. Law 7-186, § 22, 35 DCR 8250.)

Section references. — This section is referred to in §§ 32-1122 and 32-1124.

Prior Codifications. — 1981 Ed., § 36-1221.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Editor's notes. — Section effective: Section 26 (a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1122. Action against District government.

(a) The provisions of §§ 32-1120 and 32-1121 shall not apply to a District government or quasi-government agency or an entity established pursuant to interstate compact, except as provided in subsection (b) of this section.

(b) An affected employee of a District government or quasi-governmental agency or entity established pursuant to interstate compact may bring suit in the Superior Court of the District of Columbia against a District government or quasi-governmental agency or an entity established pursuant to interstate compact for a violation of this chapter. The court shall assess monetary penalties as provided in §§ 32-1120 and 32-1121, except that the penalties shall be awarded to the affected employee against the District government or quasi-governmental agency or entity established pursuant to interstate compact, should the affected employee prevail in the suit. Reasonable attorneys fees shall be awarded to the affected employee against the District government or quasi-governmental agency or entity established pursuant to interstate compact should the affected employee prevail in the suit, or if, prior to order by the court, the suit is settled in substantial conformity with the relief sought in the petition.

(c) An affected employee of the District government or quasi-governmental agency or an entity established pursuant to interstate compact may bring suit in the nature of mandamus in the Superior Court of the District of Columbia directing the Mayor, the head of the quasi-governmental agency, or the head of the entity established pursuant to interstate compact to comply with the provisions of this chapter. Reasonable attorneys fees shall be awarded to the affected employee against the District government or quasi-governmental agency or entity established pursuant to interstate compact should the affected employee prevail in the suit, or if, prior to order by the court, the suit is settled in substantial conformity with the relief sought in the petition.

(d)(1) When any citation or order finding the District government in violation of this chapter becomes final pursuant to § 32-1115 or § 32-1116, the Mayor shall post in various conspicuous sites around the relevant worksite, notices to read as follows:

WARNING
HAZARDOUS WORKSITE

Pursuant to the District of Columbia Occupational Safety and Health Act of 1988, this worksite, located at (address), has been determined to be hazardous to the health of the employees required to work here. Accordingly, pursuant to Section 18(e) of that act, employees may not be discharged or otherwise

disciplined for refusal to perform work under conditions which are in violation of the health and safety rules of the District or federal health and safety or environmental laws. For further information, contact your union representative or the D.C. Office of Occupational Safety and Health (Phone: 576-6339/ Address: 950 Upshur St., N.W.)

(2) The notices shall remain in place until the hazardous conditions are abated. The notices shall also be published daily in at least 2 newspapers of general circulation in the District, and the publication shall continue until the hazardous conditions are abated or the employees are moved to a worksite that complies with the District or federal health and safety or environmental laws.

(Mar. 16, 1989, D.C. Law 7-186, § 23, 35 DCR 8250.)

Section references. — This section is referred to in § 32-1124.

Prior Codifications. — 1981 Ed., § 36-1222.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Editor's notes. — Section effective: Section 26(a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1123. Establishment of Office of Occupational Safety and Health; promulgation of rules and regulations.

Upon approval of the plan by the Secretary, the Mayor shall have 2 years to establish the Office of Occupational Safety and Health and to promulgate rules to carry out the provisions of this chapter. Nothing in this chapter shall affect any requirements imposed upon the Mayor by the subchapter I of Chapter 5 of Title 2.

(Mar. 16, 1989, D.C. Law 7-186, § 24, 35 DCR 8250.)

Section references. — This section is referred to in § 32-1124.

Prior Codifications. — 1981 Ed., § 36-1223.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 7-186, the "District of Columbia Occupational Safety and Health Act of 1988", see Mayor's Order 89-121, May 31, 1989.

Editor's notes. — Section effective: Section 26(a) of D.C. Law 7-186 (§ 32-1124(a)) provided that §§ 36-1202, 36-1203, 36-1205 to 36-1223 (§§ 32-1102, 32-1103, 32-1105 to 32-1123, 2001 Ed.), and the repeal of subchapter II of Chapter 2 of Title 36 (Chapter 8 of Title 32, 2001 Ed.) shall apply 2 years after approval of the plan by the Secretary.

§ 32-1124. Applicability.

(a) Sections 32-1102, 32-1103, 32-1105 through 32-1123, and the repeal of Subchapter I of Chapter 8 of Title 32 shall apply 2 years after approval of the plan by the Secretary.

(b) Rules and standards adopted pursuant to any act repealed or superseded by this chapter shall remain in effect following March 16, 1989, unless replaced or repealed by rules and standards promulgated under this chapter.

(c) Nothing in this chapter shall be construed to supercede or in any manner affect any worker's compensation law or to enlarge or diminish the common law or statutory rights, duties, or liabilities of employers and employees with respect to any injury, disease, or death of an employee arising from or in the course of employment.

(Mar. 16, 1989, D.C. Law 7-186, § 26, 35 DCR 8250.)

Prior Codifications. — 1981 Ed., § 36-1224.

Legislative history of Law 7-186. — For legislative history of D.C. Law 7-186, see Historical and Statutory Notes following § 32-1101.

CHAPTER 12. PARENTAL LEAVE.

Sec.
32-1201. Definitions.
32-1202. Amount of leave; denial; form; notice.
32-1203. Effect of leave on employment benefits or seniority.
32-1204. Administrative enforcement procedure; relief.
32-1205. Enforcement by civil action.
32-1206. Notice.

§ 32-1201. Definitions.

For purposes of this chapter, the term:

(1) "Employer" means any individual, firm, association, corporation, the District of Columbia government, any receiver or trustee of any individual firm, association, or corporation, or the legal representative of a deceased employer, who uses the services of an individual ("employee") for pay in the District.

(1A) "Employee" means any individual whose services are used for pay in the District by any of the entities provided for in paragraph (1) of this section.

(2) "Parent" means:

(A) The natural mother or father of a child;

(B) A person who has legal custody of a child;

(C) A person who acts as a guardian of a child regardless of whether he or she has been appointed legally as such;

(D) An aunt, uncle, or grandparent of a child; or

(E) A person who is married to, or in a domestic partnership with a person listed in subparagraphs (A) through (D) of this paragraph.

(3) "School-related event" means an activity sponsored by either a school or an associated organization such as a parent-teacher association. A school-related event includes: a student performance such as a concert, play, or rehearsal; the sporting game of a school team or practice; a meeting with a teacher or counselor; or any similar type of activity. A school-related event shall involve the parent's child directly either as participant or subject but not as a spectator.

(4) "District of Columbia Emancipation Day" means April 16th of each year.

(5) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(Aug. 17, 1994, D.C. Law 10-146, § 2, 41 DCR 4477; Apr. 18, 1996, D.C. Law 11-110, § 44(a), 43 DCR 530; Apr. 3, 2001, D.C. Law 13-237, § 4(a), 48 DCR 597; July 18, 2008, D.C. Law 18-33, § 5, 56 DCR 4269.)

Cross references. — Complaints of violations, enforcement, see § 2-1411.03.

Prior Codifications. — 1981 Ed., § 36-1601.

Effect of amendments. — D.C. Law 13-237 added pars. (1A) and (4).

D.C. Law 18-33, in par. (2)(E), substituted "married to, or in a domestic partnership with," for "married to"; and added par. (5).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4(a) of District of Columbia Emancipation Day Temporary Act of 2000 (D.C. Law 13-152, July 18, 2000, law notification 47 DCR 6102).

Emergency legislation. — For temporary (90-day) amendment of section, see § 4(a) of the District of Columbia Emancipation Day Emergency Amendment Act of 2000 (D.C. Act 13-307, April 7, 2000, 47 DCR 2710).

For temporary (90 day) amendment of section, see § 4(a) of District of Columbia Emancipation Day Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-20, March 16, 2001, 48 DCR 2699).

Legislative history of Law 10-146. — Law 10-146, the "Parental Leave Act," was introduced in Council and assigned Bill No. 10-359, which was referred to the Committee on Labor. The Bill was adopted on first and second readings on May 3, 1994, and June 7, 1994, respectively. Signed by the Mayor on June 23, 1994, it was assigned Act No. 10-259 and transmitted to both Houses of Congress for its review. D.C. Law 10-146 became effective on August 17, 1994.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 13-237. — Law 13-237, the "District of Columbia Emancipation Day Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-631, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-514 and transmitted to both Houses of Congress for its review. D.C. Law 13-237 became effective on April 3, 2001.

Legislative history of Law 18-33. — For Law 18-33, see notes following § 32-702.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 10-146, the "D.C. Parental Leave Act of 1994", see Mayor's Order 95-66, May 2, 1995.

Resolutions. — Resolution 14-409, the "Council Emancipation Day Delegation Emergency Resolution of 2002", was approved effective April 9, 2002.

§ 32-1202. Amount of leave; denial; form; notice.

(a) Except as provided in this section, an employee who is a parent shall be entitled to a total of 24 hours leave during any 12 month period to attend or participate in a school-related event for his or her child.

(b) Except as provided in this section, an employee shall be entitled to a day of leave each year on April 16th, the District of Columbia Emancipation Day.

(c) An employer may deny the use of leave provided by subsections (a) and (b) of this section only if the granting of leave would disrupt the employer's business and make the achievement of production or service delivery unusually difficult.

(d) The leave provided by this section may consist of unpaid leave unless the parent or employee elects to use any paid family, vacation, personal, compensatory, or leave bank leave that has been provided by the employer.

(e) An employee shall notify the employer of the desire for leave to attend a school-related event or to celebrate the District of Columbia Emancipation Day at least 10 calendar days in advance, unless, in the case of a school event, the need to attend the school-related event cannot be reasonably foreseen.

(Aug. 17, 1994, D.C. Law 10-146, § 3, 41 DCR 4477; Apr. 3, 2001, D.C. Law 13-237, § 4(b), 48 DCR 597.)

Prior Codifications. — 1981 Ed., § 36-1602.

Effect of amendments. — D.C. Law 13-237 rewrote the section which had read:

"(a) Except as provided in this section, an employee who is a parent shall be entitled to a total of 24 hours leave during any 12 month period to attend or participate in school-related events for his or her child.

"(b) An employer may deny the leave provided by subsection (a) of this section only if the granting of leave would disrupt the employer's business and make the achievement of production or service delivery unusually difficult.

"(c) The leave provided by this section may consist of unpaid leave unless the parent elects to use any paid family, vacation, personal, com-

pensatory, or leave bank leave that has been provided by the employer.

"(d) Any employee shall notify the employer of the desire for leave to attend a school-related event at least 10 calendar days prior to the event, unless the need to attend the school-related event cannot be reasonably foreseen."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see §§ 2, 4(a) of District of Columbia Emancipation Day Temporary Act of 2000 (D.C. Law 13-152, July 18, 2000, law notification 47 DCR 6102).

Emergency legislation. — For temporary (90-day) authorization of legislative findings, see § 2 of the District of Columbia Emancipation Day Emergency Amendment Act of 2000 (D.C. Act 13-307, April 7, 2000, 47 DCR 2710).

For temporary (90-day) amendment of section, see § 4(b) of the District of Columbia Emancipation Day Emergency Amendment Act of 2000 (D.C. Act 13-307, April 7, 2000, 47 DCR 2710).

For temporary (90 day) amendment of section, see § 4(b) of District of Columbia Emancipation Day Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-20, March 16, 2001, 48 DCR 2699).

Legislative history of Law 10-146. — For legislative history of D.C. Law 10-146, see Historical and Statutory Notes following § 32-1201.

Legislative history of Law 13-237. — For D.C. Law 13-237, see notes following § 32-1201.

§ 32-1203. Effect of leave on employment benefits or seniority.

An employee who takes leave pursuant to § 32-1202 shall not lose any employment benefit or seniority accrued before or during the date of such leave.

(Aug. 17, 1994, D.C. Law 10-146, § 4, 41 DCR 4477.)

Prior Codifications. — 1981 Ed., § 36-1603.

Legislative history of Law 10-146. — For legislative history of D.C. Law 10-146, see Historical and Statutory Notes following § 32-1201.

§ 32-1204. Administrative enforcement procedure; relief.

(a) The Mayor shall provide an administrative procedure pursuant to which a person claimed to be aggrieved under this chapter may file a complaint against an employer alleged to have violated this chapter. A complaint shall be filed within 1 year of the occurrence or discovery of the alleged violation of this chapter.

(b) The administrative procedure shall include, but not be limited to:

(1) An investigation of the complaint and an attempt to resolve the complaint by conference, conciliation, or persuasion;

(2) If the complaint is not resolved, a determination on the existence of probable cause to believe a violation of this chapter has occurred;

(3) If there is a determination that probable cause exists, the issuance and service of a written notice and a copy of the complaint to the employer alleged to have committed the violation that requires the employer to answer the charges of the complaint at a formal hearing;

(4) A hearing conducted in accordance with procedures that the Mayor shall promulgate pursuant to subchapter I of Chapter 5 of Title 2;

(5) A decision and order accompanied by findings of fact and conclusions of law;

(6) If there is a determination that an employer committed a violation of

this chapter, the issuance of an order that requires the employer to pay the employee damages in an amount equal to:

(A) Any wages, salary, employment benefits, or other compensation denied or lost to the employee due to the violation plus interest on the amount calculated at the rate prescribed in § 28-3302(b) or (c);

(B) An amount equal to the greater of:

(i) The amount determined under subparagraph (A) of this paragraph; or

(ii) Consequential damages not to exceed an amount equal to 3 times the amount determined under subparagraph (A) of this paragraph plus any medical expenses not covered by the health insurance of the employee; and

(C) A reduction in damages, within the discretion of the trier of fact, for an employer who violates this chapter and proves that the violation occurred in good faith and that the employer had reasonable grounds to believe that the employer's action or omission was not in violation of this chapter; and

(7) A provision that authorizes the award of costs and reasonable attorney's fees to the prevailing party in addition to other relief awarded under this chapter.

(c) Any person who is adversely affected or aggrieved by an order or decision issued pursuant to subsection (b) of this section is entitled to judicial review of the order or decision in accordance with § 2-510, upon filing a written petition for review in the District of Columbia Court of Appeals.

(d)(1) If the Mayor determines that the employer has not complied with an order after 20 days following service of the order, the Mayor shall certify the matter to the Corporation Counsel and to any other agency as may be appropriate for enforcement.

(2) The Corporation Counsel shall institute, in the name of the District, a civil proceeding that may include seeking injunctive relief, as is necessary to obtain complete compliance with the order.

(3) An enforcement action shall not be instituted pending judicial review as provided in subsection (c) of this section.

(e) The entire administrative enforcement procedure outlined in subsections (a) and (b) of this section, including the formal hearing, shall take no longer than 150 days to complete from the date the complaint is filed. If the Mayor fails to make a reasonable effort to comply with the deadline requirements of the administrative enforcement provisions prescribed by this subsection and the rules promulgated by the Mayor, the person who initiated the administrative enforcement procedure against the employer may file a civil action against the employer pursuant to § 32-1205.

(Aug. 17, 1994, D.C. Law 10-146, § 5, 41 DCR 4477; Apr. 18, 1996, D.C. Law 11-110, § 44(b), 43 DCR 530.)

Section references. — This section is referred to in § 32-1205.

Prior Codifications. — 1981 Ed., § 36-1604.

Legislative history of Law 10-146. — For legislative history of D.C. Law 10-146, see Historical and Statutory Notes following § 32-1201.

Legislative history of Law 11-110. — For legislative history of D.C. Law 11-110, see Historical and Statutory Notes following § 32-1201.

§ 32-1205. Enforcement by civil action.

(a) Subject to the provisions in subsection (b) of this section, an employee or the Mayor may bring a civil action against any employer to enforce the provisions of this chapter in any court of competent jurisdiction.

(b) No civil action may be commenced more than 1 year after the occurrence or discovery of the alleged violation of this chapter.

(c) If a court determines that an employer violated any provision of this chapter, the damages provision prescribed in § 32-1204(b)(6) and (c) shall apply.

(Aug. 17, 1994, D.C. Law 10-146, § 6, 41 DCR 4477.)

Section references. — This section is referred to in § 32-1204.

Prior Codifications. — 1981 Ed., § 36-1605.

Legislative history of Law 10-146. — For legislative history of D.C. Law 10-146, see Historical and Statutory Notes following § 32-1201.

§ 32-1206. Notice.

(a) The Mayor shall devise and an employer shall post and maintain in a conspicuous place, a notice that sets forth excerpts from or summaries of the pertinent provisions of this chapter and information that pertains to the filing of a complaint under this chapter.

(b) Any employer who willfully violates this section shall be assessed a civil penalty not to exceed $100 for each day that employer fails to post the notice.

(Aug. 17, 1994, D.C. Law 10-146, § 7, 41 DCR 4477.)

Prior Codifications. — 1981 Ed., § 36-1606.

Legislative history of Law 10-146. — For legislative history of D.C. Law 10-146, see Historical and Statutory Notes following § 32-1201.

CHAPTER 13. PAYMENT AND COLLECTION OF WAGES.

Sec.
32-1301. Definitions.
32-1302. When wages must be paid; exceptions.
32-1303. Payment of wages upon discharge or resignation of employee and upon suspension of work; employer's liability for failure to make such payment.
32-1304. Unconditional payment of wages conceded to be due.
32-1305. Provisions of law may not be waived.
32-1306. Enforcement, records and subpoenas.
32-1307. Penalties.
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§ 32-1301. Definitions.

Whenever used in this chapter:

(1) "Employer" includes every individual, partnership, firm, association, corporation, the legal representative of a deceased individual, or the receiver, trustee, or successor of an individual, firm, partnership, association, or corporation, employing any person in the District of Columbia; provided, that the word "employer" shall not include the government of the United States, the government of the District of Columbia, or any agency of either of said governments, or any employer subject to the Railway Labor Act (45 U.S.C. § 151 et seq.).

(2) "Employee" shall include any person suffered or permitted to work by an employer except any person employed in a bona fide executive, administrative, or professional capacity (as such terms are defined and delimited by regulations promulgated by the Council of the District of Columbia).

(3) "Wages" mean monetary compensation after lawful deductions, owed by an employer for labor or services rendered, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

(4) "Mayor" means the Mayor of the District of Columbia or his designated agent or agents.

(5) "Working day" means any day exclusive of Saturdays, Sundays, or legal holidays.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 1.)

Prior Codifications. — 1981 Ed., § 36-101. 1973 Ed., § 36-601.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(285) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Employee.
Employer.
Wages.

Employee.

Genuine issue of material fact existed as to whether social worker and counselor were professionals or employees under District of Columbia Wage Payment and Collection Law, precluding summary judgment on claim under wage law seeking recovery of wages they were owed for hours allegedly worked as employees of company that provided counseling services. Ruffin v. New Destination, LLC, 773 F.Supp.2d 34, 2011 U.S. Dist. LEXIS 33057 (2011).

Director of research and "chief scientist" for technology company worked in a "professional capacity," and thus was exempt from coverage under District of Columbia Payment of Wages Act; director held Ph.D. and masters degrees, he was hired to oversee and develop a complicated algorithm for the company's new search engine product, he was paid an annual salary of $110,000, and he consistently exercised discretion and judgment. Kwong Yung v. Institutional Trading Co., 693 F.Supp.2d 70, 2010 U.S. Dist. LEXIS 23629 (2010).

Corporation's reliance on employee's job title of "Senior Sales Executive" without more, could not defeat employee's assertion she was salesperson rather than bona fide executive exempt from definition of "employee" under District of Columbia Wage Payment and Collection Law. Fudali v. Pivotal Corp., 310 F.Supp.2d 22, 2004 U.S. Dist. LEXIS 4749 (2004).

Oral employment contract was not "too vague" to be enforced, as argued by employer during action alleging that employer violated the Wage Payment Act; the agreement provided that employee was top help renovate restaurant, manage restaurant when it opened, and it provided the terms of payment. Sanchez v. Magafan, 892 A.2d 1130, 2006 D.C. App. LEXIS 82 (2006).

Employee qualified as an "employee" under the Wage Payment Act, and not as an independent contractor, as argued by employer, where employee presented evidence that employer reserved the right to, and did, exercise substantial control over the means and matter of employee's job performance. Sanchez v. Magafan, 892 A.2d 1130, 2006 D.C. App. LEXIS 82 (2006).

If an employer has the right to control and direct the work of an individual, not only as to the results achieved, but also as to the details by which that result is achieved, an employer/employee relationship is likely to exist. Sanchez v. Magafan, 892 A.2d 1130, 2006 D.C. App. LEXIS 82 (2006).

Employer.

Employer was not required to pay employee an end-of-year discretionary bonus, thereby precluding employee's claim alleging violation of District of Columbia Wage Payment Act due to employer's failure to pay employee a bonus, since yearly bonuses were not guaranteed compensation but rather were given only by leave of employer. Dorsey v. Jacobson Holman, PLLC, 756 F.Supp.2d 30, 2010 U.S. Dist. LEXIS 134716 (2010).

Genuine issue of material fact existed as to whether employer personally agreed to be responsible for employee's salary, precluding summary judgment in employee's action against employer for an alleged violation of the Wage Payment Act. Sanchez v. Magafan, 892 A.2d 1130, 2006 D.C. App. LEXIS 82 (2006).

Employee's failure to submit with his opposition to employer's summary judgment motion a statement enumerating disputed material facts did not preclude the court from considering his opposition to the motion for summary judgment; evidence submitted by employee, including relevant deposition statements and discovery answers, demonstrated a triable issue of fact regarding the identity of his employer. Sanchez v. Magafan, 892 A.2d 1130, 2006 D.C. App. LEXIS 82 (2006).

Wages.

Vacation pay and bonuses qualify as "wages" under the D.C. Wage Payment and Collection Law (DCWPCL). Pleitez v. Carney, 594 F.Supp.2d 47, 2009 U.S. Dist. LEXIS 6791 (2009).

§ 32-1302. When wages must be paid; exceptions.

Every employer shall pay all wages earned to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer; provided, however, that an interval of not more than 10 working days may elapse between the end of the pay period covered and the regular payday designated by the employer, except where a different period is specified in a collective agreement between an employer and a bona fide labor organization; provided further, that where, by contract or custom, an employer has

paid wages at least once each calendar month, he may lawfully continue to do so. Wages shall be paid on designated paydays in lawful money of the United States, or checks on banks payable upon demand by the bank upon which drawn.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 2.)

Section references. — This section is referred to in §§ 32-1303, 32-1304, and 32-1307.

Prior Codifications. — 1981 Ed., § 36-102. 1973 Ed., § 36-602.

CASE NOTES

ANALYSIS

Default judgments.
Oral agreements.
Pleadings.
Review.
Sufficiency of evidence.

Default judgments.

Day laborers would be substantially prejudiced by the setting aside, for mistake, inadvertence, or excusable neglect, of their default judgment against corporation in their action alleging violations of Fair Labor Standards Act (FLSA), District of Columbia wage and hour law, and District of Columbia wage payment law, particularly when laborers had already domesticated default judgment in county court, given corporation's admission that it was fighting bankruptcy and was virtually insolvent, and given likelihood that delay had increased difficulty of locating key witnesses and evidence, especially since corporation had admitted that its current situation was chaotic and it had closed its offices and laid off its employees. Canales v. A.H.R.E., Inc., 254 F.R.D. 1, 2008 U.S. Dist. LEXIS 85011 (2008).

Oral agreements.

Under D.C. Wage Payment and Collection Law (DCWPCL), employees are entitled to promised hourly wages even if an employment agreement is oral. Pleitez v. Carney, 594 F.Supp.2d 47, 2009 U.S. Dist. LEXIS 6791 (2009).

Pleadings.

Corporation's unsubstantiated allegations were insufficient to establish, by requisite clear and convincing evidence, that day laborers engaged in fraudulent conduct in pursuing their action against corporation and others for alleged violations of Fair Labor Standards Act (FLSA), District of Columbia wage and hour law, and District of Columbia wage payment law, and therefore setting aside of default judgment entered against corporation was not warranted on grounds of fraud or misconduct. Canales v. A.H.R.E., Inc., 254 F.R.D. 1, 2008 U.S. Dist. LEXIS 85011 (2008).

Corporation satisfied requirement that it assert meritorious defense in seeking to set aside default judgment entered against it in day laborers' action alleging violations of Fair Labor Standards Act (FLSA), District of Columbia wage and hour law, and District of Columbia wage payment law when corporation contended that it never employed laborers. Canales v. A.H.R.E., Inc., 254 F.R.D. 1, 2008 U.S. Dist. LEXIS 85011 (2008).

Review.

Social worker and reverend were not employed by group counseling provider in a bona fide professional capacity, and, thus, they were not exempt from wage requirements imposed on provider by District of Columbia Wage Payment and Collection Law (DCWPCL); social worker and reverend were not paid on a salary or fee basis, but on an hourly basis depending on work performed. Ruffin v. New Destination, LLC, 800 F.Supp.2d 262, 2011 U.S. Dist. LEXIS 86904 (2011).

Setting aside of default judgment entered against corporation in day laborers' action alleging violations of Fair Labor Standards Act (FLSA), District of Columbia wage and hour law, and District of Columbia wage payment law was not warranted on grounds of mistake, inadvertence, or excusable neglect, even though corporation asserted meritorious defense that it did not employ laborers, inasmuch as defense did not outweigh willful delay by corporation, which did not explain its failure to file timely answer or its delay of more than 15 months in filing response with court, and did not outweigh prejudice that laborers would incur if default judgment was set aside, particularly in light of diminished likelihood, due to corporation's financial difficulties, that laborers would be able to collect on judgment. Canales v. A.H.R.E., Inc., 254 F.R.D. 1, 2008 U.S. Dist. LEXIS 85011 (2008).

Sufficiency of evidence.

Genuine issue of material fact existed as to whether social worker and counselor were professionals or employees under District of Columbia Wage Payment and Collection Law,

precluding summary judgment on claim under wage law seeking recovery of wages they were owed for hours allegedly worked as employees of company that provided counseling services. Ruffin v. New Destination, LLC, 773 F.Supp.2d 34, 2011 U.S. Dist. LEXIS 33057 (2011).

Corporation's failure to provide any evidence of extraordinary circumstances and inability to show that it was faultless in delay precluded setting aside of default judgment entered against corporation, in day laborers' action for alleging violations of Fair Labor Standards Act (FLSA), District of Columbia wage and hour law, and District of Columbia wage payment law, under catchall provision of rule governing motions for relief from judgment. Canales v. A.H.R.E., Inc., 254 F.R.D. 1, 2008 U.S. Dist. LEXIS 85011 (2008).

§ 32-1303. Payment of wages upon discharge or resignation of employee and upon suspension of work; employer's liability for failure to make such payment.

Unless otherwise specified in a collective agreement between an employer and a bona fide union representing his employees:

(1) Whenever an employer discharges an employee, the employer shall pay the employee's wages earned not later than the working day following such discharge; provided, however, that in the instance of an employee who is responsible for monies belonging to the employer, the employer shall be allowed a period of 4 days from the date of discharge or resignation for the determination of the accuracy of the employee's accounts, at the end of which time all wages earned by the employee shall be paid.

(2) Whenever an employee (not having a written contract of employment for a period in excess of 30 days) quits or resigns, the employer shall pay the employee's wages due upon the next regular payday or within 7 days from the date of quitting or resigning, whichever is earlier.

(3) When work of an employee is suspended as a result of a labor dispute, the employer shall pay to such employee not later than the next regular payday, designated under § 32-1302, wages earned at the time of suspension.

(4) If an employer fails to pay an employee wages earned as required under paragraphs (1), (2), and (3) of this section, such employer shall pay, or be additionally liable to, the employee, as liquidated damages, 10 per centum of the unpaid wages for each working day during which such failure shall continue after the day upon which payment is hereunder required, or an amount equal to the unpaid wages, whichever is smaller; provided, however, that for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he thereafter shall have been adjudicated bankrupt upon such petition.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 3.)

Section references. — This section is referred to in § 32-1304.

Prior Codifications. — 1981 Ed., § 36-103. 1973 Ed., § 36-603.

CASE NOTES

ANALYSIS

Damages.
Hours worked.
Pleadings.
Presumptions and burden of proof.
Questions for jury.
Review.
Right to attorney.
Right to jury trial.
Summary judgment.
Unused leave.

Damages.

Restaurant wait staff and bussers were entitled to liquidated damages in FLSA collective action, where restaurant owner and operator had offered no explanation as to why they should not be; they had not suggested they believed they were in compliance with FLSA, let alone give any reason for their noncompliance, and those owed outstanding wages were entitled to twice those wages under liquidated damages provision of District of Columbia Wage Payment and Collection Law (DCWPCL), which unlike FLSA contained no good faith exception. Ventura v. Bebo Foods, Inc., 738 F.Supp.2d 8, 2010 U.S. Dist. LEXIS 127655 (2010).

Employees who were awarded unpaid hourly and overtime wages were also entitled to an amount equal to the sum of their unpaid hourly wages and unpaid overtime wages as liquidated damages under Fair Labor Standards Act (FLSA), D.C. Minimum Wage Act Revision Act (DCMWA), and D.C. Wage Payment and Collection Law (DCWPCL). Pleitez v. Carney, 594 F.Supp.2d 47, 2009 U.S. Dist. LEXIS 6791 (2009).

Hours worked.

Defendant employer would be permitted to amend its answer to correct earlier admission regarding dates of employment in employee's action alleging that employer violated the Fair Labor Standards Act (FLSA), the District of Columbia Minimum Wage Revision Act, and the District of Columbia Wage Payment and Collection law by failing to pay employee time-and-one-half for overtime work; any prejudice to employee would be ameliorated by permitting additional discovery, and amendment would not be futile because dates were relevant to potential statute of limitations defense. Morales v. Landis Constr. Corp., 715 F.Supp.2d 86, 2010 U.S. Dist. LEXIS 55823 (2010).

Pleadings.

Restaurant employees failed to state D.C. Wage Payment and Collection Law (DCWPCL) claim against individual defendant, who was not alleged to be their "employer"; employees alleged they worked for corporation, which did business as restaurant, and that individual defendant was officer of corporation and restaurant's owner. Arencibia v. 2401 Rest. Corp., 699 F.Supp.2d 318, 2010 U.S. Dist. LEXIS 31369 (2010).

Presumptions and burden of proof.

Genuine issue of material fact existed as to how many overtime hours employee worked for the relevant time period, precluding summary judgment on claims alleging that employer and its principals violated the Fair Labor Standards Act (FLSA), the District of Columbia Minimum Wage Revision Act, and the District of Columbia Wage Payment and Collection law by failing to pay employee time-and-one-half for overtime. Morales v. Landis Constr. Corp., 715 F.Supp.2d 86, 2010 U.S. Dist. LEXIS 55823 (2010).

Employee was not entitled to presumption, at summary judgment stage, that his calculation of overtime hours was correct, in action alleging that employer violated the Fair Labor Standards Act (FLSA), the District of Columbia Minimum Wage Revision Act, and the District of Columbia Wage Payment and Collection law by failing to pay employee time-and-one-half for overtime work, despite employee's claim that employer's records were unreliable, in light of declaration of employer's principal that time sheets were adequate. Morales v. Landis Constr. Corp., 715 F.Supp.2d 86, 2010 U.S. Dist. LEXIS 55823 (2010).

Questions for jury.

In suit by seven former employees to recover monetary compensation for accrued but unused leave in excess of 30-day maximum paid by employer, issues whether four of such employees were unaware of employer's 225-hour limitation, with respect to payment of accrued leave, were for jury. National Rifle Asso. v. Ailes, 428 A.2d 816, 1981 D.C. App. LEXIS 237 (1981).

Questions of whether former employee was entitled to compensation for certain periods of time and for related mileage expenses were within province of trier of facts and trier's determination of such issues would be affirmed where supported by substantial evidence. Klingaman v. Holiday Tours, Inc., 309 A.2d 54, 1973 D.C. App. LEXIS 342 (1973).

Review.

In suit by seven former employees to recover monetary compensation for accrued but unused leave in excess of 30-day maximum paid by employer, even if admission of certain testimony concerning employees' "subjective feelings and conclusions" was error, such admission

would not have caused a substantial injustice to employer so as to require reversal. D.C. Code SCR, Civil Rule 61. National Rifle Asso. v. Ailes, 428 A.2d 816, 1981 D.C. App. LEXIS 237 (1981).

In suit by seven former employees to recover monetary compensation for accrued but unused leave in excess of 30-day maximum paid by employer, refusal to give employer's requested instruction on the appropriate measure of damages was not reversible error, in light of fact that jury awarded amounts consistent with the only evidence submitted on possible damages and that court permitted employer's counsel to argue employer's theory of damages to jury. National Rifle Asso. v. Ailes, 428 A.2d 816, 1981 D.C. App. LEXIS 237 (1981).

In determining whether trial court should have granted motions for directed verdict or for judgment notwithstanding the verdict, Court of Appeals must decide whether a reasonable person, viewing the matter in light most favorable to movant, would be unable to reach a verdict in his favor. National Rifle Asso. v. Ailes, 428 A.2d 816, 1981 D.C. App. LEXIS 237 (1981).

Court of Appeals' review of a trial court's denial of new trial motion, when based on a claim that verdict is against weight of the evidence, is limited to determining whether trial court has abused its discretion. National Rifle Asso. v. Ailes, 428 A.2d 816, 1981 D.C. App. LEXIS 237 (1981).

Right to attorney.

Employer charged with willfully refusing to pay earned wages was entitled to free lawyer, under Criminal Justice Act, if employer was unable to afford his own attorney. D.C. Code 1981, §§ 11-2601 et seq., 36-103(1), 36-107, 36-213, 36-214. Olevsky v. District of Columbia, 548 A.2d 78, 1988 D.C. App. LEXIS 159 (1988).

Right to jury trial.

Defendant's failure to demand jury trial on Minimum Wage Act violations did not waive his right to jury trial, where defendant was entitled to counsel on charges of failure to pay wages, charges were tried together, and trial judge did not inform defendant of right to jury trial, which defendant probably did not know he had and of which any competent attorney would have advised him. U.S. Const.Amend. 6; D.C. Code 1981, §§ 36-103(1), 36-107, 36-213, 36-214. Olevsky v. District of Columbia, 548 A.2d 78, 1988 D.C. App. LEXIS 159 (1988).

Summary judgment.

Genuine issues of material fact as to whether alien qualified as a domestic service employee of her sponsor, the amount of time worked by alien, and whether alien worked outside sponsor's home as sponsor's employee precluded summary judgment on alien's claims against sponsor for violations the District of Columbia (D.C.) Payment and Collection of Wages Law, the D.C. Minimum Wage Act, and FLSA's minimum-wage, retaliation, and overtime provisions. Zirintusa v. Whitaker, 674 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 114005 (2009).

Unused leave.

Employee would not be granted leave to amend complaint to change statutory basis of her claim for unpaid commissions to District of Columbia Wage Payment and Collection Law rather than its Wage and Hour Law; amendment would be futile because employer's timely payment of final paycheck and reimbursement for unused vacation relieved it of statutory liability. Fudali v. Pivotal Corp., 310 F.Supp.2d 22, 2004 U.S. Dist. LEXIS 4749 (2004).

Generally, employee who accrues but does not take vacation or other paid leave is entitled to monetary compensation for that leave on discharge from employment absent an agreement to the contrary. National Rifle Asso. v. Ailes, 428 A.2d 816, 1981 D.C. App. LEXIS 237 (1981).

Generally, if an employee learns about a new policy limiting compensation for unused leave on termination but elects to stay on the job and accept compensation, that decision is sufficient to imply an agreement to continue working subject to the new limitation, but, absent an employee's express agreement to be bound by a change in policy, the employer must prove that employee's knowledge of the change was complete enough for the trier of fact to find, in fairness, that employee's decision to remain on the job was premised on acceptance of the new policy. National Rifle Asso. v. Ailes, 428 A.2d 816, 1981 D.C. App. LEXIS 237 (1981).

Determination of whether an employee has had sufficient knowledge of an employer's policy limiting compensation for unused leave on termination so as to imply acquiescence in that policy is to be based on evaluation of totality of the circumstances, including completeness of employee's knowledge about the policy and the time reasonably required by that employee to evaluate his options. National Rifle Asso. v. Ailes, 428 A.2d 816, 1981 D.C. App. LEXIS 237 (1981).

Where two employees received memorandum stating that payment for accrued leave at termination of employment would be limited to 225 hours, did not have any reason to believe that memorandum was inapplicable to them and continued to work for three months, before being discharged, without asserting that they were continuing to work without agreeing to such limitation pending a reasonable period to decide whether to resign, the employees had agreed to the limitation. National Rifle Asso. v. Ailes, 428 A.2d 816, 1981 D.C. App. LEXIS 237 (1981).

Employee, who, in August, saw memorandum stating that payment for accrued leave at termination of employment would be limited to 225 hours, who observed application of such limitation to employees discharged in November and who continued to work until February of the following year, had accepted the limitation as a condition of continuing employment. National Rifle Asso. v. Ailes, 428 A.2d 816, 1981 D.C. App. LEXIS 237 (1981).

Discharged employee may establish right to monetary compensation for accrued but unused leave by pleading and proving that, prior to performance of the work, there was an agreement entitling employee to accumulated leave, and that, as of the termination date, he had accumulated the claimed number of days; any qualification on that right, such as an additional agreement between the parties limiting or defeating employee's right to compensation for that leave, is in the nature of an affirmative defense which must be pled and proved by employer. D.C. Code SCR, Civil Rule 8(c). National Rifle Asso. v. Ailes, 428 A.2d 816, 1981 D.C. App. LEXIS 237 (1981).

In suit by seven former employees to recover monetary compensation for accrued but unused leave in excess of 30-day maximum paid by employer, employees made a sufficient showing of the right to accrued leave so as to trigger instruction that employer had to either prove existence of each employee's agreement to forfeit a portion of his unused leave on termination, or be held responsible to compensate discharged employee for all of it. National Rifle Asso. v. Ailes, 428 A.2d 816, 1981 D.C. App. LEXIS 237 (1981).

§ 32-1304. Unconditional payment of wages conceded to be due.

In case of a bona fide dispute concerning the amount of wages due, the employer shall give written notice to the employee of the amount of wages which he concedes to be due, and shall pay such amount, without condition, within the time required by §§ 32-1302 and 32-1303; provided, however, that acceptance by the employee of any payment made hereunder shall not constitute a release as to the balance of his claim. Payment in accordance with this section shall constitute payment for the purposes of complying with §§ 32-1302 and 32-1303, only if there exists a bona fide dispute concerning the amount of wages due.

(Mar. 24, 1998, D.C. Law 12-81, § 48, 45 DCR 745.)

Section references. — This section is referred to in § 32-1307.

Prior Codifications. — 1981 Ed., § 36-104. 1973 Ed., § 36-604.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

CASE NOTES

In general.

Under District of Columbia Wage Payment and Collection Law, employee's acceptance of final paycheck and reimbursement for unused vacation did not preclude her from pursuing claim for disputed commission payments under her remaining count for breach of contract. Fudali v. Pivotal Corp., 310 F.Supp.2d 22, 2004 U.S. Dist. LEXIS 4749 (2004).

§ 32-1305. Provisions of law may not be waived.

Except as herein provided, no provision of this chapter shall in any way be contravened or set aside by private agreement.

(Aug. 3, 1956, 70 Stat. 977, ch. 924, § 5.)

Prior Codifications. — 1981 Ed., § 36-105. 1973 Ed., § 36-605.

§ 32-1306. Enforcement, records and subpoenas.

(a) The Mayor shall enforce and administer the provisions of this chapter and may hold hearings and otherwise investigate any violations of this chapter and institute actions for penalties provided hereunder. Any and all prosecutions of violations of this chapter shall be conducted in the name of the District of Columbia and by the Corporation Counsel or his assistants.

(b) The Mayor shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony and to take depositions and affidavits in any proceedings before him.

(c) In case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the Superior Court of the District of Columbia or any judge thereof, on application by the Mayor, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such Court or a refusal to testify therein.

(Aug. 3, 1956, 70 Stat. 977, ch. 924, § 6; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Prior Codifications. — 1981 Ed., § 36-106. 1973 Ed., § 36-606.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 32-1307. Penalties.

(a) Any employer who, having the ability to pay, willfully violates any provisions of § 32-1302 or § 32-1304 or who fails to comply with any other provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall for the 1st offense be punished by a fine of not more than $300, or by imprisonment of not more than 30 days, or in the discretion of the court, by both such fine and imprisonment; and for any subsequent offense shall be punished by a fine of not more than $1,000 or by imprisonment of not more than 90 days, or in the discretion of the court, by both such fine and imprisonment.

(b) In addition to and apart from any other penalties or remedies provided for in this chapter, the Mayor shall assess and collect administrative penalties

up to a maximum of $300 for the first violation and up to a maximum of $500 for each subsequent violation. The Mayor shall consider factors that include the history of previous violations by the employer, the administrative costs of the proceeding to collect, and the size of the employer's business, when determining the penalty to be imposed. In addition, the Mayor may assess more than one administrative penalty against an employer for the same adversely affected employee if the employer has violated more than one statutory provision of this chapter.

(c) No administrative penalty may be collected unless the Mayor provides any person alleged to have violated any of the provisions of this section notification of the violation, notification of the amount of the administrative penalty to be imposed, and an opportunity to request an informal hearing. If a formal hearing is requested, the Mayor shall issue a final order following the hearing, containing a finding that a violation has or has not occurred. If an informal hearing is not requested, the person to whom notification of violation was provided shall transmit to the Mayor the amount of the penalty within 15 days following notification.

(Aug. 3, 1956, 70 Stat. 978, ch. 924, § 7; Apr. 3, 2001, D.C. Law 13-245, § 3, 48 DCR 647.)

Prior Codifications. — 1981 Ed., § 36-107. 1973 Ed., § 36-607.

Effect of amendments. — D.C. Law 13-245 designated the existing text as subsec. (a) and added subsecs. (b) and (c).

Legislative history of Law 13-245. — For D.C. Law 13-245, see notes following § 32-1011.

Editor's notes. — Section 4 of D.C. Law 13-245 provided: "The Mayor, pursuant to title 1 of the District of Columbia Administrative Procedure Act shall issue regulations to implement the provisions of this act."

§ 32-1308. Employees' remedies.

(a) Action by an employee to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction by any 1 or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and on behalf of all employees similarly situated. Any employee, or his representative, shall have the power to settle and adjust his claim for unpaid wages. Whenever the Mayor determines that wages have not been paid, as herein provided, and that such unpaid wages constitute an enforceable claim, the Mayor may, upon the request of the employee, take an assignment in trust for the assigning employee of such wages, and of any claim for liquidated damages, without being bound by any of the technical rules respecting the validity of any such assignments, may bring any appropriate legal action necessary to collect such claim and may join in one proceeding or action such claims against the same employer as the Mayor deems appropriate. Upon any such assignment the Mayor shall have power to settle and adjust any such claim or claims on such terms as he may deem just.

(b) The court in any action brought under this section shall, in addition to

any judgment awarded to the plaintiff or plaintiffs, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees, to be paid by the defendant. Such attorney's fees, in the case of actions brought under this subsection by the Mayor, shall be deposited in the Treasury of the United States to the credit of the District of Columbia. The Mayor shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with any action or proceeding under this chapter.

(Aug. 3, 1956, 70 Stat. 978, ch. 924, § 8.)

Prior Codifications. — 1981 Ed., § 36-108. 1973 Ed., § 36-608.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Costs and attorney fees.
In general.
Law governing.
Personal liability of corporate officer.
Presumptions and burden of proof.
Questions of fact.
Temporary employees.

Costs and attorney fees.

Under District of Columbia law, former employee's refusal of employer's offer of judgment on her claim for unpaid leave under Wage Payment Act and Collection Law did not bar her claim for attorney fees and costs, where offer of judgment was in the amount of "$173.46 for liquidated damages, costs, and attorney fees," and employee recovered $173.46 for unpaid leave, "without prejudice to the parties' arguments on attorney fees." Dorsey v. Jacobson Holman, PLLC, 851 F.Supp.2d 13, 2012 U.S. Dist. LEXIS 44140 (2012), affirmed by 2012 U.S. App. LEXIS 16406 (D.C. Cir. Aug. 7, 2012).

In collective action under FLSA and District of Columbia Wage Payment and Collection Law (DCWPCL), attorneys' hourly rates were reasonable and plaintiffs' counsel had expended a reasonable number of hours in litigation; fact that two of their attorneys charged rates lower than those listed in Laffey Matrix for attorneys with their experience more than offset fact that one attorney charged $5 more per hour than was listed, and after reviewing breakdown of plaintiffs' counsels work court concluded that tasks were not duplicative and all arose from action and that time counsel expended on each task was not excessive. Ventura v. Bebo Foods, Inc., 738 F.Supp.2d 8, 2010 U.S. Dist. LEXIS 127655 (2010).

Employees whose rights under Fair Labor Standards Act (FLSA), D.C. Minimum Wage Act Revision Act (DCMWA), and D.C. Wage Payment and Collection Law (DCWPCL) are violated are entitled to reasonable attorney fees and costs. Pleitez v. Carney, 594 F.Supp.2d 47, 2009 U.S. Dist. LEXIS 6791 (2009).

Chauffeurs were entitled to attorney fees and costs incurred in successful action under Fair Labor Standards Act and District of Columbia Minimum Wage Act. Fair Labor Standards Act of 1938, § 16(b), 29 U.S.C. § 216(b); D.C. Code 1981, §§ 36-108(b), 36-215(b). Caryk v. Coupe, 663 F. Supp. 1243, 1987 U.S. Dist. LEXIS 5307 (1987).

Rule 19 of the Superior Court Rules of Procedure for Small Claims and Conciliation Branch does not nullify statutory right of litigants to attorney's fees, under subsection (b) of this section, which was clearly remedial legislation designed to remove the cost of legal representation as a barrier to relief for unpaid

workers. Curry v. Sutherland, 111 WLR 1613 (Super. Ct. 1983).

In general.

Under District of Columbia law, it is general rule that employer may discharge at-will employee at anytime and for any reason, or no reason at all. Owens v. Nat'l Med. Care, Inc., 337 F.Supp.2d 131, 2004 U.S. Dist. LEXIS 19340 (2004).

In the District of Columbia, an employer may discharge an at-will employee at any time and for any reason, or for no reason at all. Wilson v. Prudential Fin., 332 F.Supp.2d 83, 2004 U.S. Dist. LEXIS 16845 (2004), dismissed in part by 2004 U.S. Dist. LEXIS 21786 (D.D.C. Oct. 18, 2004).

As a matter of District of Columbia law, salary, benefits, and similar terms do not indicate employment for a specific term and thus do not affect the at-will presumption. Wilson v. Prudential Fin., 332 F.Supp.2d 83, 2004 U.S. Dist. LEXIS 16845 (2004), dismissed in part by 2004 U.S. Dist. LEXIS 21786 (D.D.C. Oct. 18, 2004).

In District of Columbia, an employer may discharge an at-will employee at any time and for any reason, or for no reason at all. Sokos v. Hilton Hotels Corp., 283 F.Supp.2d 42, 2003 U.S. Dist. LEXIS 16914 (2003).

Employee's employment was at will under District of Columbia law, such that alleged employer's failure to pay him per diem could not constitute breach of implied covenant of good faith and fair dealing or breach of contract, and his discharge could not constitute wrongful discharge, even though employee had written "employment agreement" indicating 36-month term of employment, where agreement stated that employer could at any time during term of agreement discharge employee for cause for a number of enumerated reasons, that employee could voluntarily terminate his employment by giving two weeks advance notice, and that term of agreement would be 36 months or such lesser period as would be determined by employer at its sole discretion. Gowens v. DynCorp, 132 F.Supp.2d 38, 2001 U.S. Dist. LEXIS 2557 (2001).

Department of Employment Services' ruling dismissing worker's wage claim did not necessarily resolve issue against worker on merits for all purposes; Department's ruling may have been finding that it lacked jurisdiction to consider matter rather than determination on merits that he was not entitled to payment for his services as wages. D.C. Code 1981, § 36-108. Gill v. Tolbert Constr., 676 A.2d 469, 1996 D.C. App. LEXIS 93 (1996).

Law governing.

Even though count alleging breach of collective bargaining agreement had been originally brought as common-law contract action in Superior Court of District of Columbia, federal law would have been applicable since federal law is preemptive in area of labor-management relations. Papadopoulos v. Sheraton Park Hotel, 410 F. Supp. 217, 1976 U.S. Dist. LEXIS 16317 (1976).

Wage payment law rather than minimum wage law was applicable to former employee's claims against former employer for allegedly unpaid wages and, therefore, denial of former employee's claim for liquidated damages, attorneys' fees and costs in reliance on the minimum wage law was improper, where former employee did not quarrel with hourly rate but sued on basis of wages allegedly due for certain hours of work. D.C. Code §§ 17-305(a), 36-401 et seq., 36-415, 36-415(a), 36-601 et seq., 36-603(d), 36-608(b). Klingaman v. Holiday Tours, Inc., 309 A.2d 54, 1973 D.C. App. LEXIS 342 (1973).

Personal liability of corporate officer.

Officer of private corporation that was awarded contract to manage nursing home owned by the District of Columbia was personally liable, as a corporate shareholder, to employees on their claim under the Wage Payment Law; corporate veil was pierced by officer's conduct in transferring assets to another corporation that he controlled in order to shield them from taxing authorities, and in misleading employees into believing that their obligations to the government and creditors were being satisfied, was part of a deceptive scheme that proximately led to the collapse of the corporations and the failure to pay wages. Lawlor v. District of Columbia, 758 A.2d 964, 2000 D.C. App. LEXIS 206 (2000).

Officer of private corporation that was awarded contract to manage nursing home owned by the District of Columbia was personally liable to employees, due to his tortious conduct, on their claim under the Wage Payment Law, where officer transferred assets to another corporation that he controlled in order to shield them from taxing authorities, officer misled employees into believing that their obligations to the government and creditors were being satisfied, and this deceptive scheme proximately caused the collapse of the corporations and the failure to pay wages. Lawlor v. District of Columbia, 758 A.2d 964, 2000 D.C. App. LEXIS 206 (2000).

Officer of corporation, who was the daughter of officer of corporation that was awarded contract to manage nursing home owned by the District of Columbia, was personally liable to employees, both as a corporate officer and as a shareholder, on their claim under the Wage Payment Law, though officer followed orders from her father, where officer was actively involved in scheme that transferred assets to

her corporation in order to shield them from taxing authorities, which proximately caused the collapse of the corporations and the failure to pay wages. Lawlor v. District of Columbia, 758 A.2d 964, 2000 D.C. App. LEXIS 206 (2000).

Officer of private corporation that was awarded contract to manage nursing home owned by the District of Columbia was not personally liable to employees on their claim under the Wage Payment Law, though she was the wife of officer who was found to be personally liable to the employees; employees proffered no evidence that officer, as treasurer, was actively involved in her husband's scheme that transferred assets in order to shield them from taxing authorities, which proximately caused the collapse of the corporations and the failure to pay wages. Lawlor v. District of Columbia, 758 A.2d 964, 2000 D.C. App. LEXIS 206 (2000).

Presumptions and burden of proof.

In order to rebut the presumption that employment is at-will under District of Columbia law, and thereby sustain a cause of action for wrongful discharge under a breach of contract theory, a plaintiff must provide evidence of clear contractual intent on the part of both the employer and the employee. Lance v. UMW 1974 Pension Trust, 355 F.Supp.2d 358, 2005 U.S. Dist. LEXIS 776 (1974), vacated by 400 F. Supp. 2d 29, 2005 U.S. Dist. LEXIS 25164 (D.D.C. 2005).

In the District of Columbia, an employment relation of unspecified length is presumed to be employment at-will, and is thus terminable by either party at any time for any reason. Lance v. UMW 1974 Pension Trust, 355 F.Supp.2d 358, 2005 U.S. Dist. LEXIS 776 (1974), vacated by 400 F. Supp. 2d 29, 2005 U.S. Dist. LEXIS 25164 (D.D.C. 2005).

Questions of fact.

Questions of whether former employee was entitled to compensation for certain periods of time and for related mileage expenses were within province of trier of facts and trier's determination of such issues would be affirmed where supported by substantial evidence. Klingaman v. Holiday Tours, Inc., 309 A.2d 54, 1973 D.C. App. LEXIS 342 (1973).

Temporary employees.

Staffing company did not breach employment contract with temporary, at-will employee by failing to find her other employment, where company provided assurances that it would help employee find other work after initial temporary position ended. Pope v. Romac Int'l, 829 A.2d 945, 2003 D.C. App. LEXIS 488 (2003).

Temporary employee was an at-will employee of staffing company, and thus employee could not state a claim against company for wrongful discharge. Pope v. Romac Int'l, 829 A.2d 945, 2003 D.C. App. LEXIS 488 (2003).

§ 32-1309. Mayor may delegate functions.

The Mayor is authorized to delegate to any agency of the government of the District of Columbia any function, power, or duty vested in or imposed upon him by this chapter.

(Aug. 3, 1956, 70 Stat. 978, ch. 924, § 9.)

Prior Codifications. — 1981 Ed., § 36-109. 1973 Ed., § 36-609.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 32-1310. Severability.

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application

of such provision to other persons or circumstances shall not be affected thereby.

(Aug. 3, 1956, 70 Stat. 979, ch. 924, § 10.)

Prior Codifications. — 1981 Ed., § 36-110. 1973 Ed., § 36-110.

CHAPTER 13A. TRANSITIONAL EMPLOYMENT AND PRE-APPRENTICESHIP PROGRAMS.

Sec.
32-1331. Transitional employment program.
Sec.
32-1332. Pre-apprenticeship program.

§ 32-1331. Transitional employment program.

(a) The Mayor shall establish and implement a program, subject to the annual appropriation of funds, to provide transitional employment for District of Columbia residents residing in persistent problem areas who face barriers to employment due to deficiencies in education, work experience, work training, work skills, prior incarceration, or the loss of certain occupations or industries from the economy of the District or the Washington Metropolitan Area.

(b) For purposes of this section "persistent problem area" shall mean those areas of the District where such factors as crime, lack of economic development, and high unemployment create a particular need for the services of this program and which the Mayor may further identify by executive order.

(c) At the time of entry into the program, participants shall be certified as to residence by the Department of Employment Services and assessed as to their readiness for placement in paid work positions. Based upon that assessment, a comprehensive service and case management plan shall be developed for each participant. Plans may include supportive services such as health care, childcare, counseling, financial management services, remedial education, and placement into wage paying jobs.

(d) All jobs into which participants are placed shall pay stipends, training wages, or wages as the Mayor may determine are appropriate for the job and participant and shall last for a maximum of 12 months. Placements shall be made into jobs that provide participants the opportunity to obtain needed work experience and gain job skills, with the goal of a successful transition to unsubsidized employment.

(e) All jobs into which participants are placed shall be the subject of an agreement between the Department of Employment Services and the worksite host providing that no regular employee will be displaced by program participants.

(f) Program participants placed in jobs shall participate in placement activities during their work experience including periodic job search requirements, participation in peer support groups, job coaching, and other activities and services directed to placing participants in unsubsidized employment.

(g) Participants may be provided with additional placement and supportive services for up to 6 months after the conclusion of their work experience jobs if these services are found to enhance the participants' chances of obtaining or continuing in unsubsidized employment.

(Oct. 20, 2005, D.C. Law 16-33, § 2102, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2102 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 32-242.

Short title. — Short title of subtitle H of title II of Law 16-33: Section 2101 of D.C. Law 16-33 provided that subtitle H of title II of the act may be cited as the Transitional Employment Program and Apprenticeship Initiative Establishment Act of 2005.

§ 32-1332. Pre-apprenticeship program.

(a) The Mayor, subject to the annual appropriation of funds, shall establish and administer a pre-apprenticeship program to assist District residents in meeting the requirements for registered apprenticeship programs.

(b) This program may include academic remediation, classroom-related instruction, other educational training, and on-the-job training in occupational skills necessary for entry into existing or registered new apprenticeship programs.

(c) The Mayor may enter into agreements with local unions and employers to provide pre-apprenticeship assistance. In selecting participants for pre-apprenticeship programs, the Mayor may give priority to residents of persistent problem areas.

(Oct. 20, 2005, D.C. Law 16-33, § 2103, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2103 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 32-242.

CHAPTER 13B. HIRING OF EX-OFFENDERS.

Sec.
32-1351. Hiring of qualified ex-offenders.

§ 32-1351. Hiring of qualified ex-offenders.

The Department of Public Works shall hire qualified ex-offenders to fill at least 26.9 full-time equivalent positions dedicated to the agency's alley-cutback, graffiti-removal, and other public works programs.

(Sept. 18, 2007, D.C. Law 17-20, § 6132, 54 DCR 7052.)

Emergency legislation. — For temporary (90 day) addition, see § 6132 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — Law 17-20, the "Fiscal Year 2008 Budget Support Act of 2007", was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Short title. — Short title: Section 6131 of D.C. Law 17-20 provided that subtitle N of title VI of the act may be cited as the "Hiring of Ex-Offenders Act of 2007".

CHAPTER 13C. PROHIBITION ON DISCRIMINATION AGAINST THE UNEMPLOYED.

Sec.
32-1361. Definitions.
32-1362. Discrimination based on status as unemployed unlawful.
32-1363. Retaliation unlawful.
32-1364. Exemptions.
32-1365. Oversight.
32-1366. Civil penalties.
32-1367. Rules.
32-1368. Applicability of chapter.

§ 32-1361. Definitions.

For the purposes of this chapter, the term:

(1) "Employee" means any individual employed by an employer.

(2)"Employer" means any person who employs or seeks to employ for compensation one or more individuals for a position in the District (but not including the person's parent, spouse, child, or domestic servant engaged in work in and about the employer's household). The term "employer" includes any person acting in the interest of the person, directly or indirectly.

(3) "Employment agency" means any person regularly undertaking or attempting, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of that person.

(4) "Potential employee" means any individual who has applied to an employer for a vacant position to gain employment.

(5) "Status as unemployed" means any individual who, at the time of applying for employment, or, who at the time an act alleged to violate this chapter occurs, does not have a job, is available for work, and is seeking employment.

(May 31, 2012, D.C. Law 19-132, § 2, 59 DCR 2391.)

Legislative history of Law 19-132. — Law 19-132, the "Unemployed Anti-Discrimination Act of 2012", was introduced in Council and assigned Bill No. 19-486, which was referred to the Committee on Aging and Community Affairs. The Bill was adopted on first and second readings on February 7, 2012, and March 6, 2012, respectively. Signed by the Mayor on March 19, 2012, it was assigned Act No. 19-329 and transmitted to both Houses of Congress for its review. D.C. Law 19-132 became effective on May 31, 2012.

§ 32-1362. Discrimination based on status as unemployed unlawful.

No employer or employment agency shall:

(1) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or

(2) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:

(A) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or

(B) Any provision stating or indicating that an employment agency will

not consider or hire an individual for employment based on that individual's status as unemployed.

(May 31, 2012, D.C. Law 19-132, § 3, 59 DCR 2391.)

Legislative history of Law 19-132. — For history of Law 19-132, see notes under § 32-1361.

§ 32-1363. Retaliation unlawful.

No employer or employment agency shall:

(1) Interfere with, restrain, or deny the exercise of, or the attempted exercise of, any right provided under this chapter; or

(2) Fail or refuse to hire, or discharge, any employee or potential employee because the employee or potential employee:

(A) Opposed any practice made unlawful by this chapter;

(B) Has filed any charge, or has instituted or caused to be instituted any proceeding, relating to any right provided under this chapter;

(C) Has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this chapter; or

(D) Has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this chapter.

(May 31, 2012, D.C. Law 19-132, § 4, 59 DCR 2391.)

Legislative history of Law 19-132. — For history of Law 19-132, see notes under § 32-1361.

§ 32-1364. Exemptions.

(a) Nothing set forth in this chapter shall be construed as prohibiting an employer or employment agency from publishing, in print, on the Internet, or in any other medium, an advertisement for any job vacancy that contains any provision setting forth any other qualifications for a job, as permitted by law, including:

(1) The holding of a current and valid professional or occupational license;

(2) A certificate, registration, permit, or other credential; or

(3) A minimum level of education, training, or professional, occupational, or field experience.

(b) Nothing in this chapter is intended to preclude an employer or employment agency from examining the reasons underlying an individual's status as unemployed in assessing an individual's ability to perform a job or in otherwise making employment decisions about that individual.

(c) Nothing in this chapter shall be construed as prohibiting an employer or employment agency from publishing, in print, on the Internet, or in any other medium, an advertisement for any job vacancy that contains any provision stating that only applicants who are currently employed by the employer will be considered for employment.

(May 31, 2012, D.C. Law 19-132, § 5, 59 DCR 2391.)

Legislative history of Law 19-132. — For history of Law 19-132, see notes under § 32-1361.

§ 32-1365. Oversight.

(a) The District of Columbia Office of Human Rights ("Office") shall receive, review, and investigate complaints regarding violations of this chapter and shall take appropriate enforcement action regarding the complaints.

(b) The Office shall respond to a complaint arising pursuant to this chapter no later than one month after the complaint is filed.

(c) The Office shall assess civil penalties in all cases where the Office determines that an employer or employment agency has committed a violation of this chapter.

(May 31, 2012, D.C. Law 19-132, § 6, 59 DCR 2391.)

Legislative history of Law 19-132. — For history of Law 19-132, see notes under § 32-1361.

§ 32-1366. Civil penalties.

(a) An employer or employment agency that the Office finds to have violated this chapter shall be subject to a civil penalty for a first violation of $1,000 per claimant, $ 5,000 per claimant for a second violation, and $10,000 per claimant for each subsequent violation, but not to exceed a total of $20,000 per violation. The Office shall collect the penalty from the violator and distribute the funds collected among any employee or potential employee who filed a claim regarding a violation of this chapter.

(b) Nothing set forth in this chapter shall be construed as creating, establishing, or authorizing a private cause of action by an aggrieved person against an employer or employment agency who has violated, or is alleged to have violated, the provisions of this chapter.

(May 31, 2012, D.C. Law 19-132, § 7, 59 DCR 2391.)

Legislative history of Law 19-132. — For history of Law 19-132, see notes under § 32-1361.

§ 32-1367. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [D.C. Code § 2-501 et seq.], shall issue rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 30-day review period, the proposed rules shall be deemed approved.

(May 31, 2012, D.C. Law 19-132, § 8, 59 DCR 2391.)

Legislative history of Law 19-132. — For history of Law 19-132, see notes under § 32-1361.

§ 32-1368. Applicability of chapter.

This chapter shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

(May 31, 2012, D.C. Law 19-132, § 9, 59 DCR 2391.)

Legislative history of Law 19-132. — For history of Law 19-132, see notes under § 32-1361.

CHAPTER 14. VOLUNTARY APPRENTICES.

Subchapter I. General

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32-1431. Registration of apprenticeship program required.

Subchapter I. General.

§ 32-1401. Purpose.

It is the purpose of this subchapter to open to young people in the District of Columbia the opportunity to obtain training that will equip them for profitable employment and citizenship; to set up, as a means to this end, a program of voluntary apprenticeship under approved apprenticeship agreements providing facilities for their training and guidance in the arts and crafts of industry and trade, with parallel instruction in related and supplementary education; to promote employment opportunities for young people under conditions providing adequate training and reasonable earnings; to relate the supply of skilled workers to employment demands; to establish standards for apprentice training; to establish an apprenticeship council; to provide for the establishment of local joint trade apprenticeship committees to assist in effectuating the purposes of this subchapter; to provide for a director of apprenticeship within the District of Columbia; to provide for reports to the Congress and to the public regarding the status of apprenticeship in the District of Columbia; to establish a procedure for the determination of apprenticeship agreement controversies; and to accomplish related ends.

(May 21, 1946, 60 Stat. 204, ch. 267, § 1.)

Prior Codifications. — 1981 Ed., § 36-401. 1973 Ed., § 36-121.

§ 32-1402. Apprenticeship Council; membership; term; compensation.

Without regard for any other provision of law with respect to the appointment of officers and employees of the United States or the District of Columbia, the Mayor of the District of Columbia shall appoint and the Council shall confirm an Apprenticeship Council, to be composed of 11 members, as follows: Three representatives from employer organizations, 3 representatives from employee organizations, and 3 public representatives, who are not members of

either employee or employer organizations, chosen to make the Apprenticeship Council better reflect the composition of the District of Columbia labor force, including women and minorities who are traditionally under-represented in the trades, and 2 representatives of government, who shall be the Mayor of the District of Columbia and the Superintendent of Schools or their respective delegates. The terms of office of the members of the Apprenticeship Council first appointed by the Mayor shall expire as designated by the Mayor at the time of making the appointment: One representative each of employers, employees and the public being appointed for 1 year; 1 representative each of employers, employees and the public appointed for 2 years; and 1 representative each of employers, employees and the public for 3 years. Thereafter, each member shall be appointed for a term of 3 years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the remainder of said term. The compensation of each member not otherwise compensated by public money shall be paid not more than $25 per day for each day spent in attendance at meetings of the Apprenticeship Council; provided, however, that any applicable laws passed by the Council of the District of Columbia shall supersede the provisions of this section.

(May 21, 1946, 60 Stat. 204, ch. 267, § 2; Mar. 3, 1979, D.C. Law 2-139, § 3205(ff), 25 DCR 5740; Mar. 6, 1979, D.C. Law 2-156, § 2, 25 DCR 6991.)

Cross references. — Effective date provisions, see § 1-636.02.

Nomination and approval of agency heads, see § 1-523.01.

Prior Codifications. — 1981 Ed., § 36-402. 1973 Ed., § 36-122.

Legislative history of Law 2-139. — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978," was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-156. — Law 2-156, the "Amendments to an Act to Provide for Voluntary Apprenticeship in the District of Columbia Act of 1978," was introduced in Council and assigned Bill No. 2-325, which was referred to the Committee on Employment and Economic Development. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-325 and transmitted to both Houses of Congress for its review.

§ 32-1403. Director of Apprenticeship; assistance authorized.

The Secretary of Labor shall appoint a Director of Apprenticeship who shall serve without compensation and who shall have no vote. Without regard for the provisions of any other law with respect to the appointment of officers and employees of the United States or the District of Columbia, the Director of Apprenticeship shall be chosen from among the employees of the Apprentice-Training Service actually engaged in formulating and promoting standards of apprenticeship under the provisions of Public Law No. 308 (29 U.S.C. §§ 50-50b). The Apprentice-Training Service is further authorized to supply the Director or the Council with such clerical, technical, and professional assistance as shall be deemed by said Service to be essential to effectuate the purposes of this subchapter.

(May 21, 1946, 60 Stat. 204, ch. 267, § 3.)

Section references. — This section is referred to in § 1-202.04.

Prior Codifications. — 1981 Ed., § 36-403. 1973 Ed., § 36-123.

Editor's notes. — The Office of the Director of Apprenticeship was abolished pursuant to § 1-202.04(d).

§ 32-1404. Meetings of Apprenticeship Council; rules and regulations; reports.

The Apprenticeship Council shall meet at the call of the Director, or the chairman thereof, and shall aid in formulating policies for the effective administration of this subchapter. Subject to the approval of the Secretary of Labor, the Apprenticeship Council shall establish standards for apprenticeship agreements in accordance with those prescribed by this subchapter, shall issue such rules and regulations as may be necessary to carry out the intent and purposes of this subchapter, and shall perform such other functions as are necessary to carry out the intent of this subchapter. Not less than once every 2 years the Apprenticeship Council shall make a report through the Mayor of its activities and findings to the Congress and to the public.

(May 21, 1946, 60 Stat. 205, ch. 267, § 4.)

Prior Codifications. — 1981 Ed., § 36-404. 1973 Ed., § 36-124.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 32-1405. Administration of subchapter; responsibility of Board of Education.

The Director, under the supervision of the Secretary of Labor and with the advice and guidance of the Apprenticeship Council, is authorized to administer the provisions of this subchapter in cooperation with the Apprenticeship Council and local joint trade apprenticeship committees, to set up conditions and training standards for apprentices, which conditions or standards shall in no case be lower than those prescribed by this subchapter; to act as secretary of the Apprenticeship Council and of joint trade apprenticeship committees; to approve, if, in his opinion, approval is for the best interest of the apprentice, any apprentice agreement which meets the standards established by or in accordance with this subchapter; to terminate or cancel any apprenticeship agreement in accordance with the provisions of such agreement; and to perform such other duties as are necessary to carry out the intent of this subchapter; provided, that the administration and supervision of related and

supplemental instruction for apprentices, coordination of the instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of the District Board of Education.

(May 21, 1946, 60 Stat. 205, ch. 267, § 5.)

Prior Codifications. — 1981 Ed., § 36-405. 1973 Ed., § 36-125.

§ 32-1406. Apprenticeship committees.

Local joint trade apprenticeship committees in any trade or group of trades may be approved by the Apprenticeship Council. Such apprenticeship committees shall be composed of an equal number of employer and employee representatives appointed by the groups or organizations they represent, or the committee may consist of the employer and not less than 2 representatives from the recognized bargaining agency. In a trade or group of trades in which there is no bona fide employee organization, the Apprenticeship Council may appoint a joint trade apprenticeship committee from persons known to represent the interests of employers and of employees, or the Council may act itself as such joint committee. Subject to the review of the Council, and in accordance with standards established by or under authority of this subchapter, joint trade apprenticeship committees may set up standards to govern the training of apprentices and give such aid as may be necessary in effectuating such standards.

(May 21, 1946, 60 Stat. 205, ch. 267, § 6.)

Prior Codifications. — 1981 Ed., § 36-407. 1973 Ed., § 36-126.

§ 32-1407. "Apprentice" defined.

The term "apprentice," as used herein, shall mean a person at least 16 years of age who has entered into a written agreement, hereinafter called an apprenticeship agreement, with an employer, an association of employers, or an organization of employees, which apprenticeship agreement provides for not less than 2,000 hours of reasonably continuous employment for such person and for his participation in an approved program of training through employment and through education in related and supplemental subjects.

(May 21, 1946, 60 Stat. 205, ch. 267, § 7; Mar. 6, 1979, D.C. Law 2-156, § 4, 25 DCR 6991.)

Prior Codifications. — 1981 Ed., § 36-408. 1973 Ed., § 36-127.

Legislative history of Law 2-156. — For legislative history of D.C. Law 2-156, see Historical and Statutory Notes following § 32-1402.

§ 32-1408. Apprenticeship agreements — Contents.

Every apprenticeship agreement entered into under this subchapter shall contain:

(1) The names and signatures of the contracting parties, including the apprentice's parent or guardian if he be a minor;

(2) The date of birth of the apprentice;

(3) A statement of the trade, craft, or business which the apprentice is to be taught and the time at which the apprenticeship will begin and end;

(4) A statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction shall be not less than 144 hours per year;

(5) A statement setting forth a schedule of the processes in the trade or industry divisions in which the apprentice is to be taught and the approximate time to be spent at each process;

(6) A statement of the graduated scale of wages to be paid the apprentice and whether the required school time shall be compensated;

(7) A statement providing for a period of probation during which time the apprenticeship agreement shall be terminated by the Director at the request in writing of either party, and providing that after such probationary period the apprenticeship agreement may be terminated by the Director by mutual agreement of all parties thereto, or canceled by the Director for good and sufficient reasons;

(8) A provision that all controversies or differences concerning the apprenticeship agreement which cannot be adjusted by conference between the apprentice and the employer or under the terms of the apprenticeship standard shall be submitted to the Director for determination as provided for in § 32-1409;

(9) A provision that an employer who is unable to fulfill his obligation under the apprenticeship agreement may, with the approval of the Director or under the direction of the joint trade apprenticeship committee, transfer such contract to any other employer; provided, that the apprentice consents and that such other employer agrees to assume the obligations of said apprenticeship agreement; and

(10) Such additional terms and conditions as may be prescribed or approved by the Council not inconsistent with the provisions of this subchapter.

(May 21, 1946, 60 Stat. 206, ch. 267, § 8.)

Prior Codifications. — 1981 Ed., § 36-410. 1973 Ed., § 36-128.

§ 32-1409. Apprenticeship agreements — Registration and approval; extension into majority of apprentice.

No apprenticeship agreement shall be registered or approved by the Director under the provisions of this subchapter unless it conforms with the standards established by or in accordance with this subchapter and is in the best interests of the apprentice. Where a minor enters into an agreement for a period of training extending into his majority, and such agreement has been approved by the Director, then such apprenticeship agreement shall, if the

parties therein so provide, have the same force and effect during the period covered by the majority of such minor as if such agreement were entered into during the majority of such minor.

(May 21, 1946, 60 Stat. 206, ch. 267, § 9.)

Section references. — This section is referred to in § 32-1408.

Prior Codifications. — 1981 Ed., § 36-411. 1973 Ed., § 36-129.

§ 32-1410. Apprenticeship agreements — Violations; hearings; determinations; appeals.

(a) Upon the complaint of any interested person or upon his own initiative, the Director may investigate to determine if there has been a violation of the terms of an apprenticeship agreement made under this subchapter, and he may hold hearings, inquiries, and other proceedings necessary to such investigation and determination. The parties to such an agreement shall be given a fair and impartial hearing after reasonable notice thereof. All such hearings, investigations, and determinations shall be made under authority of reasonable rules and procedures prescribed by the Apprenticeship Council, subject to the approval of the Secretary of Labor.

(b) The determination of the Director shall be filed with the Council. If no appeal therefrom is filed with the Council within 10 days after the date thereof, as herein provided, such determination shall become the order of the Council. Any person aggrieved by any determination or action of the Director may appeal therefrom to the Council, which shall hold a hearing thereon after due notice to the interested parties. Any person aggrieved by the action of the Council may appeal as provided in the District of Columbia Administrative Procedure Act (§§ 2-501 to 2-510).

(May 21, 1946, 60 Stat. 206, ch. 267, § 10; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 583, Pub. L. 91-358, title I, § 163(e).)

Prior Codifications. — 1981 Ed., § 36-412. 1973 Ed., § 36-130.

§ 32-1411. Application of subchapter.

The provisions of this subchapter shall apply to any person, firm, corporation, or craft in the District of Columbia which has voluntarily elected to conform with its provisions.

(May 21, 1946, 60 Stat. 207, ch. 267, § 11.)

Prior Codifications. — 1981 Ed., § 36-413. 1973 Ed., § 36-131.

§ 32-1412. "Secretary of Labor" defined.

As used or referred to in this subchapter the term "the Secretary of Labor" shall mean the administrator of that department or agency of the United

States government authorized to administer the provisions of Public Law No. 308 (29 U.S.C. §§ 50-50b).

(May 21, 1946, 60 Stat. 207, ch. 267, § 12.)

Prior Codifications. — 1981 Ed., § 36-414. 1973 Ed., § 36-132.

§ 32-1413. Severability.

If any provision of this subchapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the subchapter, and the application of such provision to other persons and circumstances, shall not be affected thereby.

(May 21, 1946, 60 Stat. 207, ch. 267, § 14.)

Prior Codifications. — 1981 Ed., § 36-415. 1973 Ed., § 36-133.

Subchapter II. Registration Requirement for Contractors.

§ 32-1431. Registration of apprenticeship program required.

(a)(1) All prime contractors and subcontractors who contract with the District of Columbia government to perform construction, renovation work, or information technology work with a single contract, or cumulative contracts, of at least $500,000, let within a 12-month period shall be required to register an apprenticeship program with the District of Columbia Apprenticeship Council; and

(2) All beneficiaries of projects in excess of $1 million funded in whole or in part with funds which, in accordance with a federal grant or otherwise, the District of Columbia government administers, and in which the District of Columbia is a signatory to any agreement of a contractual nature, shall be required to register an apprenticeship program with the District of Columbia Apprenticeship Council.

(b) Beginning July 1, 2005, 35% of all apprenticeship hours performed pursuant to apprenticeship programs required by subsection (a) of this section shall be performed by District of Columbia residents.

(c)(1) Any prime contractor, subcontractor, or beneficiary that fails to comply with subsection (b) of this section shall be subject to a monetary fine in the amount of 5% of the direct and indirect labor costs of the contract.

(2) Fines for a violation of subsection (b) of this section shall be imposed by the Contracting Officer. The Contracting Officer may waive or reduce any fine if the Contracting Officer finds that:

(A) A good faith effort to comply with the requirements of this section has been demonstrated by the prime contractor, subcontractor, or the beneficiary;

(B) The prime contractor, subcontractor, or the beneficiary enters into a special workforce development training or placement arrangement with the Department of Employment Services or the DC Workforce Investment Council;

(C) The Department of Employment Services certifies that there is an insufficient number of District residents in the labor market possessing the skills required for the apprenticeship positions needed under the contract; or

(D) The prime contractor, subcontractor, or the beneficiary is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area, which is comprised of the District of Columbia, Calvert, Charles, Howard, Montgomery and Prince George's Counties in Maryland, Arlington, Fairfax, Loudon, Prince William and Stafford Counties in Virginia and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia.

(3) Any fine resulting from a violation of this subsection shall be remitted to the District of Columbia Public Schools to be used solely for the support of vocational education programs, subject to appropriations by Congress.

(d) The prime contractor, subcontractor, or the beneficiary shall submit to the Department of Employment Services, for every month following the execution of the contract, a compliance report for the project that includes:

(1) The apprenticeship programs required by subsection (a) of this section that are registered with the District of Columbia Apprenticeship Council;

(2) The total number of apprenticeship hours required for the project;

(3) The total number of apprenticeship hours performed by District of Columbia residents; and

(4) The total number of apprentices hired for the reporting period and the cumulative total number of apprentices hired, including, for each, the:

(A) Name;

(B) Residence;

(C) Apprenticeship position; and

(D) Hire date.

(e) Nonprofit organizations with 50 employees or less shall be exempt from subsections (a) and (b) of this section.

(f) For purposes of this section, the term:

(1) "Beneficiary" means a signatory to a contract for a project in excess of $1 million funded in whole or in part with funds which, in accordance with a federal grant or otherwise, the District of Columbia government administers, and in which the District of Columbia is a signatory to any agreement of a contractual nature.

(2) "Information technology work" means the occupations of computer programmer, programmer analyst, desktop specialist, technical support specialist, data base specialist, network support specialist, and any other related occupation as the District of Columbia Apprenticeship Council may designate by regulation.

(Mar. 6, 1979, D.C. Law 2-156, § 5, 25 DCR 6991; Apr. 3, 2001, D.C. Law 13-257, § 2, 48 DCR 764; Apr. 8, 2005, D.C. Law 15-295, §)

Cross references. — Franchise apprentice programs, need for approval, see § 34-1262.02.

Prior Codifications. — 1981 Ed., § 36-409. 1973 Ed., § 36-127.1.

Effect of amendments. — D.C. Law 13-257 designated the existing text as subsec. (a) and added subsecs. (b) and (c).

D.C. Law 15-295 rewrote this section.

Legislative history of Law 2-156. — For legislative history of D.C. Law 2-156, see Historical and Statutory Notes following § 32-1402.

Legislative history of Law 13-257. — Law 13-257, the "Information Technology Apprenticeship Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-760, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 22, 2000, it was assigned Act No. 13-544 and transmitted to both Houses of Congress for its review. D.C. Law 13-257 became effective on April 3, 2001.

Legislative history of Law 15-295. — Law 15-295, the "Apprenticeship Requirements Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-884, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-691 and transmitted to both Houses of Congress for its review. D.C. Law 15-295 became effective on April 8, 2005.

CHAPTER 15. WORKERS' COMPENSATION.

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§ 32-1501. Definitions.

When used in this chapter, the term:

(1) "Adoption" or "adopted" means legal adoption prior to the time of the injury.

(2) "Brother" or "sister" includes stepbrothers and stepsisters, half-brothers and half-sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee.

(3) "Carrier" means any person or fund authorized under § 32-1534 to insure under this chapter and includes self-insurers.

(4) "Child" includes a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least 1 year prior to the time of injury, and a stepchild or acknowledged child born out of wedlock dependent upon the deceased, but does not include married children unless wholly dependent on the employee.

(5) "Child," "grandchild," "brother," or "sister" includes only persons who are:

(A) Under 18 years of age, and also persons who, though 18 years of age or over, are substantially dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability; or

(B) Are students as defined herein.

(6) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this chapter, and includes funeral benefits provided herein.

(7) "Death" as a basis for a right to compensation means only death resulting from an injury.

(8) "Disability" means physical or mental incapacity because of injury which results in the loss of wages.

(8A) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(8B) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(9) "Employee" includes every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, in the District of Columbia, except:

(A) An employee subject to the provisions of § 7902 and subchapter I of Chapter 81 of Title 5, United States Code;

(B) An employee subject to the provisions of subchapter XXIII of Chapter 6 of Title 1;

(C) Any secretary, stenographer, or other person performing any services in the office of any member of Congress, or under the direction, employment, or at the request of any member of Congress;

(D) An employee of a common carrier by railroad when engaged in interstate or foreign commerce or commerce solely within the District of Columbia;

(E) An employee engaged in employment that is casual and not in the usual course of trade, business, occupation, or profession of the employer unless the employee is employed in domestic service in and around a private home by any employer who, during any calendar quarter in the same or the previous year, employed 1 or more household domestic workers for 240 hours or more; or

(F) Any person who is a licensed real estate salesperson, or a licensed real estate broker associated with a real estate broker, if:

(i) Substantially all of the salesperson's or associated broker's remuneration is derived from real estate commissions;

(ii) The services of the salesperson or associated broker are performed under a written contract specifying that the salesperson or associated broker is an independent contractor; and

(iii) Such contract includes a provision that the salesperson or associated broker will not be treated as an employee for federal income tax purposes.

(10) "Employer" includes any individual, firm, association, or corporation, or receiver, or trustee of the same, or the legal representative of a deceased employer, using the service of another for pay within the District of Columbia.

(11) "Grandchild" means a child as above defined of a child as above defined.

(12) "Injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of third persons directed against an employee because of his employment.

(13) "Insurance consultation services" means any survey, consultation, inspection, advisory or related services performed by a carrier, its agents, employees or service contractors incident to an applicable policy of insurance for the purpose of reducing the likelihood of injury, death or loss, or to collect or verify information for purpose of underwriting.

(14) "Mayor" means the Mayor of the District of Columbia, or his designated agent.

(14A) "Nonscheduled benefits" means any partial disability not enumerated in § 32-1508.

(15) "Parent" includes stepparents and parents by adoption, parents-in-law, and any person who for more than 3 years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

(16) "Person" means an individual, partnership, corporation, association, firm, trust, or legal representative thereof.

(17) "Physical impairment" means any physical or mental condition which is or is likely to be a hindrance or obstacle to obtaining employment.

(17A) "Physician" means a physician, dentist, or chiropractor licensed in:

(A) Accordance with Chapter 12 of Title 3; or

(B) Any state or jurisdiction of the United States, in accordance with the laws of that state or jurisdiction.

(17B) "Professional athlete" means a skilled athlete under a contract of hire or collective bargaining agreement.

(17C) "Professional athlete's work life expectancy" means the work life expectancy of a professional athlete that is determined separately for each professional sports franchise in the District by the Office of Workers' Compensation through its rulemaking authority.

(17D) "Safe workplace program" means a program that an employer implements voluntarily to promote safety in the workplace. A certified program shall include a formal written safety policy developed by a safety committee made up of equal numbers of management representatives and employee representatives who are elected by their peers and who serve on the clock, and whose functions include a workplace inspection at least annually, regular meetings with written records, and making recommendations to the employer of ways to eliminate workplace hazards and unsafe work practices, appropriate training in hazard assessment and control, effective accident and incident identification and the role of the federal and local Occupational Safety and Health Administration. Where there is a duty to bargain collectively, the employer shall collectively bargain the use and implementation of the safe workplace program.

(18) "Student" means a person regularly pursuing a full-time course of study or training at an institution which is:

(A) A school or college or university operated or directly supported by the United States, or by any state or local government or political subdivision thereof;

(B) A school or college or university which has been accredited by a state or the District of Columbia, or a state or District of Columbia recognized, or nationally recognized accrediting agency or body;

(C) A school or college or university not so accredited but whose credits are accepted, on transfer, by not less than 3 institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(D) An additional type of educational or training institution as defined by the Mayor, but not after he reaches the age of 23 or has completed 4 years of education beyond the high school level, except that, where his 23rd birthday occurs during a semester or other enrollment period, he shall continue to be considered a student until the end of such semester or other enrollment period. A child shall not be deemed to have ceased to be a student during any interim between school years if the interim does not exceed 5 months and if he shows to the satisfaction of the Mayor that he has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately following the interim or during a period of reasonable duration during which, in the judgment of the Mayor, he is prevented by factors beyond his control from pursuing his education. A child shall not be deemed a student under this section during a period of service in the Armed Forces of the United States.

(18A) "Utilization review" means the evaluation of the necessity, character, and sufficiency of both the level and quality of medically related services provided an injured employee based upon medically related standards.

(19) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer, and gratuities received in the course of employment from other than the employer.

(20) "Surviving spouse or domestic partner" includes the decedent's spouse or domestic partner living with or dependent for support upon the decedent at the time of his or her death, or living apart for justifiable cause or by reason of his or her desertion at such time.

(21) When used in this chapter, the singular includes the plural.

(July 1, 1980, D.C. Law 3-77, § 2, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(a), 37 DCR 6890; Sept. 22, 1994, D.C. Law 10-169, § 2, 41 DCR 5145; Apr. 16, 1999, D.C. Law 12-229, § 2(a), 46 DCR 891; Oct. 14, 1999, D.C. Law 13-49, § 12(a), 46 DCR 5153; Sept. 12, 2008, D.C. Law 17-231, § 31(a), 55 DCR 6758.)

Section references. — This section is referred to in §§ 2-308.14, 4-205.19k, 6-1405.01, 32-1508, and 32-1511.

Prior Codifications. — 1981 Ed., § 36-301.

Effect of amendments. — D.C. Law 13-49 added the definition of "nonscheduled benefits". D.C. Law 17-231 added pars. (8A) and (8B); and rewrote par. (20), which had read as fol-

lows: "(20) 'Widow' or 'widower' includes the decedent's wife or husband living with or dependent for support upon the decedent at the time of his death; or living apart for justifiable cause or by reason of his or her desertion at such time."

Legislative history of Law 3-77. — Law 3-77, the "District of Columbia Workers' Compensation Act of 1979," was introduced in Council and assigned Bill No. 3-106, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on April 22, 1980, and May 6, 1980, respectively. Signed by the Mayor on May 14, 1980, it was assigned Act No. 3-188 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-198. — For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 32-1542.01.

Legislative history of Law 10-169. — Law 10-169, the "District of Columbia Workers' Compensation Act of 1979 Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-143, which was referred to the Committee on Labor. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-289 and transmitted to both Houses of Congress for its review. D.C. Law 10-169 became effective on September 22, 1994.

Legislative history of Law 12-229. — Law 12-229, the "Workers' Compensation Act of 1998," was introduced in Council and assigned Bill No. 12-192, which was referred to the Committee on Government Operations. The Bill was adopted on first and second reading on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-571, and transmitted to both Houses of Congress for review. D.C. Law 12-229 became effective on April 16, 1999.

Legislative history of Law 13-49. — Law 13-49, the "Criminal Code and Clarifying Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-61, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 2, 1999, and April 13, 1999, respectively. Signed by the Mayor on May 13, 1999, it was assigned Act No. 13-69 and transmitted to both Houses of Congress for its review. D.C. Law 13-49 became effective on October 19, 1999.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 32-408.

Editor's notes. — District of Columbia Workers' Compensation Equity Amendment Act of 1990 Rulemaking Disapproval Resolution of 1991: Pursuant to Resolution 9-145, effective November 22, 1991, the Council disapproved the proposed rules to implement the District of Columbia Workers' Compensation Equity Amendment Act of 1990.

Mayor authorized to issue rules: Section 4 of D.C. Law 8-198 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1 (subchapter I of Chapter 5 of Title 2, 2001 Ed.), issue rules to implement the provisions of this act within 90 days from the date of enactment of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(b) The proposed rules shall include standards for:

(1) A coding system for medical reports and bills; and.

(2) The implementation of utilization review.

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ANALYSIS

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Accidental injury.

— Aggravation of preexisting condition, accidental injury.

Preexistence of arthritic neck condition could not, alone, be deemed determinative factor as to whether worker suffered "injury" and as to whether injury arose out of and in course of employment. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 2(2), 3, 20, 20(a) as amended 33 U.S.C. §§ 901 et seq., 902(2), 903, 920, 920(a); D.C. Code §§ 36-501, 36-502. Riley v. U. S. Industries/Federal Sheet Metal, Inc., 627 F.2d 455, 1980 U.S. App. LEXIS 17331 (C.A.D.C. 1980), reversed by 455 U.S. 608, 102 S. Ct. 1312, 71 L. Ed. 2d 495, 1982 U.S. LEXIS 30, 50 U.S.L.W. 4295 (1982).

If an employee experiences a work-related injury that, combined with a previous disability or physical impairment, work-related or not work-related, causes substantially greater disability or death, the liability of the employer under the Workers' Compensation Act (WCA) shall be as if the subsequent injury alone caused the subsequent amount of disability. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

An aggravation of a preexisting condition may constitute a compensable accidental injury under the Worker's Compensation Act (WCA); the fact that other, nonemployment related factors may also have contributed to or additionally aggravated the malady does not affect the right to compensation under the aggravation rule. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

If recurrence of worker's medical condition results from work-related trauma or event, then it constitutes compensable aggravation of prior condition under Workers' Compensation Act. D.C. Code 1981, § 36-301 et seq. Harris v. District of Columbia Office of Worker's Compensation, 660 A.2d 404, 1995 D.C. App. LEXIS 135 (1995).

Emotional injuries which result from aggravation of an existing condition may be compensable under Workers' Compensation Act. D.C. Code 1981, §§ 36-301 to 36-345. Sturgis v. District of Columbia Dep't of Employment Servs., 629 A.2d 547, 1993 D.C. App. LEXIS 188 (1993).

— In general.

Accidental injury within workmen's compensation law may occur notwithstanding injured employee has been engaged in his usual and ordinary activity and injury need not be external but it is enough if something unexpectedly goes wrong within the human frame. Longshoremen's and Harbor Workers' Compensation Act,§§ 1-50 as amended 33 U.S.C. §§ 901-950; D.C. Code § 36-501. Wheatley v. Adler, 407 F.2d 307, 1968 U.S. App. LEXIS 6912 (C.A.D.C. 1968).

The very essence of workmen's compensation is that the injury must be "accidental," and "accidental" means unexpected. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; Employee's Compensation Act D.C., D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Hartford Accident & Indemnity Co. v. Cardillo, 112 F.2d 11, 1940 U.S. App. LEXIS 4924 (1940).

Term "accidental injury," within compensation statute, includes any injury unexpected or not designed, though employee be subject to physical infirmities at time, and may occur notwithstanding employee be then engaged in his usual and ordinary work, and such injury need not be external. Longshoremen's and Harbor Workers' Act, 33 U.S.C. § 901 et seq.; D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Commercial Casualty Ins. Co. v. Hoage, 75 F.2d 677, 1935 U.S. App. LEXIS 3029 (1935).

"Accidental injury," as used in the Workers' Compensation Act (WCA), does not require that an unusual incident be the cause of the injury but is satisfied if something unexpectedly goes wrong within the human frame, and "human frame" in turn encompasses two concepts; first, the nature of the activity or event that results in or contributes to the injury may occur in the usual and ordinary course of work, and second, the nature of the potential cause of the disability need not be a discrete, particularized event. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

Question whether claim presents compensable "accidental injury" does not depend on whether employment event which allegedly caused it was emotional or physical stressor, or whether that stressor was usual or unusual; rather, injury, to be "accidental," need only be something that unexpectedly goes wrong within the human frame. D.C. Code 1981, § 36-301(12). Jones v. District of Columbia Dep't of Employment Services, 519 A.2d 704, 1987 D.C. App. LEXIS 272 (1987).

Heart attack attributable to emotional stress resulting from suspension and potential discharge, could have been "accidental injury," compensable by workers' compensation. D.C. Code 1981, § 36-301(12). Jones v. District of Columbia Dep't of Employment Services, 519 A.2d 704, 1987 D.C. App. LEXIS 272 (1987).

Department of Employment Services' interpretation of "accidental injury" to mean something unexpectedly going wrong within human frame was reasonable in light of prevailing law, under which "accidental injury" as predicate for worker's compensation did not mean injury resulting from unusual occurrence. D.C. Code 1981, § 36-301(12). Washington Metropolitan Area Transit Authority v. District of Columbia Dep't of Employment Services, 506 A.2d 1127, 1986 D.C. App. LEXIS 300 (1986).

— Mental disease and emotional distress, accidental injury.

Coverage under the District of Columbia's Workers' Compensation Act (WCA) extends to claims for emotional distress or mental anguish where the underlying tort is covered by the WCA. Vanzant v. Wash. Metro. Area Transit Auth., 557 F.Supp.2d 113, 2008 U.S. Dist. LEXIS 42788 (2008).

In "mental-mental" workers' compensation cases, in which claimants allege that an emotionally-traumatic workplace event or stressor caused a mental injury, a test for the existence of actual workplace stressors must be one verifying the factual reality of stressors in the workplace environment, rather than one requiring the claimant to prove that a hypothetical average or healthy person would have suffered a similar psychological injury. Muhammad v. D.C. Dep't of Empl. Servs., 34 A.3d 488, 2012 D.C. App. LEXIS 3 (2012).

A primary difference between "physical-mental claims," in which workers' compensation claimants allege that a physical workplace injury caused a mental injury, and "mental-mental claims," in which claimants allege that an emotionally-traumatic workplace event or stressor caused a mental injury, is that in the context of physical-mental disabilities, the physical accident is the unexpected occurrence supplying the necessary, and objective, workplace connection. Muhammad v. D.C. Dep't of Empl. Servs., 34 A.3d 488, 2012 D.C. App. LEXIS 3 (2012).

Objective test for determining entitlement to compensation for psychological injuries, which requires an employee to show that an average person not predisposed to such injury would have suffered a similar injury, does not apply to workers' compensation cases that involve psychological injuries that result from accidental physical injuries occurring in the workplace; abrogating Landesberg v. District of Columbia Dept. of Employment Services., 794 A.2d 607, and Porter v. District of Columbia Dept. of Employment Services., 625 A.2d 886. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

In appropriate circumstances, an emotional injury may be compensable under workers' compensation law. Gary v. District of Columbia Dep't of Empl. Servs., 723 A.2d 1205, 1998 D.C. App. LEXIS 244 (1998).

For workers' compensation claimant to establish that emotional injury arises out of mental stress of employment, claimant must show that actual conditions of employment, as determined by objective standard and not merely claimant's subjective perception of his working conditions, were cause of his emotional injury; objective standard is satisfied where claimant shows that actual working conditions could have caused similar emotional injury in person who was not significantly predisposed to such injury. Gary v. District of Columbia Dep't of Empl. Servs., 723 A.2d 1205, 1998 D.C. App. LEXIS 244 (1998).

Claimant who has pre-existing psychological disability is not necessarily barred from recovering for emotional injury under workers' compensation law. Gary v. District of Columbia Dep't of Empl. Servs., 723 A.2d 1205, 1998 D.C. App. LEXIS 244 (1998).

Test for determining the compensability of an emotional injury is an objective one: workers' compensation claimant must show that the actual working conditions could have caused similar emotional injury in an individual who was not significantly predisposed to such injury. Gary v. District of Columbia Dep't of Empl. Servs., 723 A.2d 1205, 1998 D.C. App. LEXIS 244 (1998).

In order to be compensated, workers' compensation claimant who had pre-existing psychological condition had to show that her supervisor's actions could have caused a similar psychological injury in a person not significantly predisposed to such injury. Gary v. District of Columbia Dep't of Empl. Servs., 723 A.2d 1205, 1998 D.C. App. LEXIS 244 (1998).

For workers' compensation claimant to establish that an emotional injury arises out of mental stress or mental stimulus of employment, claimant must show that actual conditions of employment, as determined by objec-

tive standard and not merely claimant's subjective perception of his working conditions, were cause of his emotional injury, and objective standard is satisfied where claimant shows that actual working conditions could have caused similar emotional injury in a person who was not significantly predisposed to such injury. McKinley v. District of Columbia Dep't of Empl. Servs., 696 A.2d 1377, 1997 D.C. App. LEXIS 151 (1997).

Emotional injuries resulting from job stress are, in appropriate circumstances, compensable accidental injuries under Workers' Compensation Act. Charles P. Young Co. v. District of Columbia Dep't of Empl. Servs., 681 A.2d 451, 1996 D.C. App. LEXIS 153 (1996).

Pertinent question in determining whether claimant may recover workers' compensation for emotional injury caused by job stress is whether stresses of job were so great that they could have caused harm to average worker. Charles P. Young Co. v. District of Columbia Dep't of Empl. Servs., 681 A.2d 451, 1996 D.C. App. LEXIS 153 (1996).

Emotional injuries resulting from job stress are, under certain circumstances, compensable accidental injuries under Workers' Compensation Act. D.C. Code 1981, § 36-301(12). Sturgis v. District of Columbia Dep't of Employment Servs., 629 A.2d 547, 1993 D.C. App. LEXIS 188 (1993).

Compensability of emotional injuries under Workers' Compensation Act is determined by objective standard which requires claimant to show that actual working conditions could have caused similar emotional injury in individual who was not significantly predisposed to such injury. D.C. Code 1981, § 36-301(12). Sturgis v. District of Columbia Dep't of Employment Servs., 629 A.2d 547, 1993 D.C. App. LEXIS 188 (1993).

To be compensated for emotional injuries, workers' compensation claimant must establish that particular incident or situation at work was significant stressor that could reasonably be expected to affect person of ordinary sensibilities in same way it affected claimant. D.C. Code 1981, § 36-301(12). Sturgis v. District of Columbia Dep't of Employment Servs., 629 A.2d 547, 1993 D.C. App. LEXIS 188 (1993).

Worker may recover workers' compensation for emotional injury caused by job stress upon showing that actual conditions of employment, as determined by objective standard and not merely worker's subjective perception of his working conditions, were cause of injury; even employee who is predisposed to psychic injury could recover if he is exposed to work conditions so stressful that normal employee might have suffered similar injury. Spartin v. District of Columbia Dep't of Employment Services, 584 A.2d 564, 1990 D.C. App. LEXIS 327 (1990).

— Sexual harassment, accidental injury.

Sexual harassment is not risk involved in or incidental to employment for injuries resulting from emotional distress attributable to sexual harassment to be statutory injuries arising out of employment for workers' compensation purposes. D.C. Code 1981, § 36-301(12). Estate of Underwood v. National Credit Union Admin., 665 A.2d 621, 1995 D.C. App. LEXIS 168 (1995).

Arising out of and in course of employment—In general.

"Course of employment" within compensation act may include incidents of social character, the correct criterion being involvement of the incident in the employment. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 2(2), 33 U.S.C. §§ 901 et seq., 902(2); D.C. Code 1940, §§ 36-501, 36-502, 33 U.S.C. § 901 note. Hurley v. Lowe, 168 F.2d 553, 1948 U.S. App. LEXIS 3254 (1948).

Heat stroke causing death of parking lot attendant was compensable as "arising out of and in course of employment". Longshoremen's and Harbor Workers' Compensation Act § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note. Davison v. Cardillo, 143 F.2d 154, 1944 U.S. App. LEXIS 4290 (1944).

An injury arises "out of employment" when it occurs in the course of employment and as a result of risk involved in or incidental to the employment or to conditions under which it is required to be performed. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, §§ 36-501, 36-502, 33 U.S.C. § 901 note. Ackerman v. Cardillo, 140 F.2d 348, 1944 U.S. App. LEXIS 4381 (1944).

In order for accident to be compensable as "arising out of employment" as well as "in the course of employment," employee need not be exposed to a special risk, but employee's exposure to risks of the street is deemed increased whenever the work requires his presence upon the street, whether such risks are common to him and other users or peculiar to him alone, and the street merely replaces the factory as the working environment. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; Employee's Compensation Act D.C., D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Hartford Accident & Indemnity Co. v. Cardillo, 112 F.2d 11, 1940 U.S. App. LEXIS 4924 (1940).

In determining whether injury is compensable as "arising out of employment," important fact is not the peculiar nature of the environment or of accidental risk, but that the work brings worker within the orbit of dangers, and injury need not be natural, normal, or predictable, though causal connection between work and injury is made more plain thereby. Longshoremen's and Harbor Workers' Compen-

sation Act, 33 U.S.C. § 901 et seq.; Employee's Compensation Act D.C., D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Hartford Accident & Indemnity Co. v. Cardillo, 112 F.2d 11, 1940 U.S. App. LEXIS 4924 (1940).

The common element in determining whether injury is compensable as "arising out of employment" or in the "course of employment" is not the particular or peculiar character of the associations and conditions, but fact that the work creates and surrounds the employee with the associations and conditions surrounding the specific act or event which is immediate cause of injury. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; Employee's Compensation Act D.C., D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Hartford Accident & Indemnity Co. v. Cardillo, 112 F.2d 11, 1940 U.S. App. LEXIS 4924 (1940).

In order to make injury compensable as "arising out of employment", particular act or event which is the immediate cause of injury need not be itself part of any work done for the employer by the claimant or others. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; Employee's Compensation Act D.C., D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Hartford Accident & Indemnity Co. v. Cardillo, 112 F.2d 11, 1940 U.S. App. LEXIS 4924 (1940).

An injury "arises out of the employment" when it occurs in the course of the employment and as a result of a risk involved in, or incident to, the employment or to the conditions under which it is required to be performed and the fact that the injury is contemporaneous or coincident with employment is not alone a sufficient basis for an award of compensation. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Fazio v. Cardillo, 109 F.2d 835, 1940 U.S. App. LEXIS 4900 (1940).

Injury "arises out of employment" when it occurs in course of employment and as result of risk involved in or incidental to employment or to conditions under which employment is required to be performed. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950; D.C. Code 1929, T. 19,§§ 11, 12. Speaks v. Hoage, 78 F.2d 208, 1935 U.S. App. LEXIS 3683 (1935).

To determine whether injury arose in course of employment, reference must be had to time, place and circumstances under which injury occurred. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950; D.C. Code 1929, T. 19, §§ 11, 12. Morgan v. Hoage, 72 F.2d 727, 1934 U.S. App. LEXIS 4668 (1934).

Injury "arises out of" employment within Compensation Act when occurring in course of employment due to risk incidental to employment or working conditions. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950; D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Ayers v. Hoage, 63 F.2d 364, 1933 U.S. App. LEXIS 3432 (1933).

Death from burns sustained by employee in epileptic seizure while using hot water hose in course of employment held to "arise out of and in course of employment." Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950; D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. President, etc., of Georgetown College v. Stone, 59 F.2d 875, 1932 U.S. App. LEXIS 3473 (1932).

Employers must accept with their employees the frailties that predispose them to bodily hurt, and if an employee's disability arose even in part out of and in the course of her employment, workers' compensation is appropriate. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

An injury arises out of and in the course of employment, for purposes of workers' compensation analysis, when it occurs in the course of the employment and as the result of a risk involved in or incidental to the employment or to the conditions under which it is required to be performed. Wright v. D.C. Dep't of Empl. Servs., 924 A.2d 284, 2007 D.C. App. LEXIS 234 (2007).

Claim of psychological injury, premised upon a racial epithet directed at workers' compensation claimant by his supervisor at work, was not one which arose from a risk involved in or was incidental to claimant's employment, and thus was not compensable under the Workers' Compensation Act; claim stemmed from a single conversation about overtime pay, record did not reveal that the incident was part of a continuing pattern of conduct, and record was also silent as to whether the stress from the incident caused claimant to be unable to work. Wright v. D.C. Dep't of Empl. Servs., 924 A.2d 284, 2007 D.C. App. LEXIS 234 (2007).

To be compensable under Workers' Compensation Act, injury must both arise out of and occur in the course of employment. D.C. Code 1981, § 36-301(12). Clark v. District of Columbia Dep't of Empl. Servs., 743 A.2d 722, 2000 D.C. App. LEXIS 8 (2000).

For injury to be compensable under Workers' Compensation Act, injury must both arise out of and occur within the course of employment. D.C. Code 1981, § 36-301 et seq. Kolson v. District of Columbia Dep't of Empl. Servs., 699 A.2d 357, 1997 D.C. App. LEXIS 187 (1997).

An injury arises out of employment, and is compensable under workers' compensation law, if it would not have occurred but for fact that conditions and obligations of employment placed claimant in a position where he was injured. McKinley v. District of Columbia Dep't

of Empl. Servs., 696 A.2d 1377, 1997 D.C. App. LEXIS 151 (1997).

To be compensable under Workers' Compensation Act, injury must be either an accidental injury that arises out of and in course of employment or an occupational disease or infection that arises naturally out of such employment or naturally or unavoidably results from such accidental injury. D.C. Code 1981, § 36-301(12). Sturgis v. District of Columbia Dep't of Employment Servs., 629 A.2d 547, 1993 D.C. App. LEXIS 188 (1993).

— Acts for benefit of employer and employee, arising out of and in course of employment.

It is not necessary, in order to establish that injury arose out of and in course of employment, that employee be engaged at time of injury in activity of benefit to employer. Amalgamated Asso. of Street, etc. Employees v. Adler, 340 F.2d 799, 1964 U.S. App. LEXIS 3625 (C.A.D.C. 1964).

"Course of employment" on a specified errand or business trip, ordered by an employer, to a place different from the regular place of employment, includes all the ordinary incidents of the errand, such as the eating of meals in ordinary places at ordinary times which the employer would normally contemplate as occurring in the course of errand. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 2(2), 33 U.S.C. §§ 901 et seq., 902(2); D.C. Code 1940, §§ 36-501, 36-502, 33 U.S.C. § 901 note. Hurley v. Lowe, 168 F.2d 553, 1948 U.S. App. LEXIS 3254 (1948).

For purposes of determining whether an injury "arises out of" employment for purposes of Worker's Compensation Act, an employee need not be engaged in activity of benefit to the employer at the time of the injury for injury to be compensable. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

Workers' compensation claimant's injuries resulting from pre-employment MMR (measles, mumps, and rubella) inoculation obtained as condition before being employed by hospital, pursuant to local regulations, occurred in course of employment for purposes of workers' compensation statute, where, but for employment, claimant had no obligation, nor inclination, to obtain vaccination, and vaccination furthered interests of employer in avoiding liability and reducing absenteeism. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 821 A.2d 898, 2003 D.C. App. LEXIS 223 (2003).

— Acts for individual purposes or benefit of employee, arising out of and in course of employment.

Injuries sustained by warehouse manager while driving his automobile to warehouse on Sunday for main purpose of procuring ashes for personal use held not compensable as arising "out of and in course of employment". Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950; D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Indemnity Ins. Co. of North America v. Hoage, 58 F.2d 1074, 1932 U.S. App. LEXIS 4825 (1932).

Injury sustained by hospital employee when hospital administered pain-killer injection to employee's non-work-related ankle injury did not arise in the course of employee's employment with hospital for purposes of workers' compensation; although injections took place at workplace during work hours, injections were not reasonably related to or incidental to her employment as a fellow in pain management in the department of anesthesiology, there was no evidence that injections were motivated by or benefited hospital, and hospital employees did not face a greater risk than the general public of a maladministered injection. Bentt v. D.C. Dep't of Empl. Servs., 979 A.2d 1226, 2009 D.C. App. LEXIS 451 (2009).

— Acts for personal comfort or convenience of employee, arising out of and in course of employment.

Generally, accidents and death occurring while employee is on his way to or from toilet facilities or while he is engaged in relieving himself, arise within course of employment for workmen's compensation purposes, subject to possible question of reasonableness of means or place chosen. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-50 as amended 33 U.S.C. §§ 901-950; D.C. Code § 36-501. Wheatley v. Adler, 407 F.2d 307, 1968 U.S. App. LEXIS 6912 (C.A.D.C. 1968).

Evidence that driver of sight-seeing automobile was directed to Mount Vernon to pick up passengers at noon, that driver reached Mount Vernon 45 minutes ahead of time and decided to drive two miles to lunchroom which was not on route he had just traveled but which was on another route which he might have taken, that while returning from lunchroom to Mount Vernon automobile overturned injuring driver, that driver could have obtained lunch at Mount Vernon and that he was rightfully driving the automobile when he was injured sustained finding that injury "arose out of and in course of employment." Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; D.C. Code 1929, T. 19, § 11. Cardillo v. Hartford Accident & Indemnity Co., 109 F.2d 674, 1940 U.S. App. LEXIS 4895 (1940).

Where hotel employee during lunch hour, when subject to call if needed, went on roof of building for fresh air, and to escape a rain attempted to crawl under cover of ventilator shaft and fell through a screen over the shaft, the injury did not arise "out of the employ-

ment." Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Monahan v. Hoage, 90 F.2d 419, 1937 U.S. App. LEXIS 3837 (1937).

— Acts of co-employee or third person, arising out of and in course of employment.

When it is clear that employment contributed nothing to the episode, whether by engendering or exacerbating the quarrel or facilitating the assault, the assault on workers' compensation claimant should be held noncompensable. Clark v. District of Columbia Dep't of Empl. Servs., 743 A.2d 722, 2000 D.C. App. LEXIS 8 (2000).

— Assaults by co-employees, arising out of and in course of employment.

Fatal injury of employee struck while at work by fellow employee because of refusal to pay commission for obtaining job, notwithstanding that no liability to pay existed, "arose out of employment" within Longshoremen's Compensation Act and entitled decedent's widow to compensation. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; D.C. Code 1929, T. 19, § 11, 33 U.S.C. § 901 note. Penker Const. Co. v. Cardillo, 118 F.2d 14, 1941 U.S. App. LEXIS 4673 (1941).

An injury "arises out of employment" within Longshoremen's Compensation Act if it is caused by the environment, whether inanimate, animal, or human, to which the employment exposes the employee, and it does not matter whether he is struck by a machine, a mule or a man so long at least as he does not provoke the attack, and an assault by a stranger or a fellow employee clearly "arises out of the employment" where the employment provides the motive for the assault. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; D.C. Code 1929, T. 19, § 11, 33 U.S.C. § 901 note. Penker Const. Co. v. Cardillo, 118 F.2d 14, 1941 U.S. App. LEXIS 4673 (1941).

Where checker addressed employee whom he was directing as "Shorty," and employee resentfully called checker a vile name, so that checker thereupon struck employee, resulting injuries were compensable as "arising out of employment" and in "course of employment." Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 3(b) 33 U.S.C. §§ 901 et seq., 903(b); Employee's Compensation Act D.C., D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Hartford Accident & Indemnity Co. v. Cardillo, 112 F.2d 11, 1940 U.S. App. LEXIS 4924 (1940).

Where compensation claimant is merely the victim of, not a participant in, quarrel resulting in injury, injury may be compensable as "arising out of employment" or in "course of employment," irrespective of whether fighting is by fellow employees or by strangers, or whether the fighting is over the work or about something else, and it is sufficient that work brings claimant within the range of peril by requiring his presence there when it strikes. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; Employee's Compensation Act D.C., D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Hartford Accident & Indemnity Co. v. Cardillo, 112 F.2d 11, 1940 U.S. App. LEXIS 4924 (1940).

Injuries sustained by an employee in a personal difficulty with another employee of the same employer having no relation to the employment itself and in which there is no causal connection between the injury and the employment are not compensable. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Fazio v. Cardillo, 109 F.2d 835, 1940 U.S. App. LEXIS 4900 (1940).

The death of an assistant cook in a restaurant who was killed with a meat cleaver by a bus boy during an altercation regarding the manner of doing boy's work, "arose out of employment" within Longshoremen's and Harbor Workers' Compensation Act. D.C. Code 1929, tit. 19, §§ 11, 12, 33 U.S.C. § 901 note; Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq. Maryland Casualty Co. v. Cardillo, 99 F.2d 432, 1938 U.S. App. LEXIS 2892 (1938).

Where financial secretary of lodge was killed while on way to lodge by disgruntled lodge member disappointed because unable to collect certain moneys believed to be due from lodge, death did not "arise in course of employment." Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950; D.C. Code 1929, T. 19, §§ 11, 12. Morgan v. Hoage, 72 F.2d 727, 1934 U.S. App. LEXIS 4668 (1934).

An injury suffered from an assault may arise out of employment within the meaning of the Workers' Compensation Act (WCA) if the reason for the assault is a quarrel having its origin in work. Joyner v. Sibley Mem. Hosp., 826 A.2d 362, 2003 D.C. App. LEXIS 417 (2003).

Although assault is intentional, from the perspective of the employer, the injury is still accidental, and employer is liable so long as workers' compensation claimant's injury arose out of and occurred in course of employment. Clark v. District of Columbia Dep't of Empl. Servs., 743 A.2d 722, 2000 D.C. App. LEXIS 8 (2000).

— Assaults by third persons, arising out of and in course of employment.

Where automobile salesman, while taking prospective customer to see truck which sales-

man was trying to sell the customer, left the automobile in which he was riding in a state of intoxication to obtain cigarettes for himself and his companion and was assaulted without provocation by a third person, the injury did not arise out of the employment. Wimmer v. Hoage, 90 F.2d 373, 1937 U.S. App. LEXIS 3820 (1937).

Injury suffered by bus driver at 4:30 a.m. when he was struck by assailant while walking from bus terminal to nearby hotel arose out of and was in the course of his employment, for workers' compensation purposes, where driver arrived from out-of-town assignment at 4:00 a.m., was too tired to drive home and requested hotel "chit" from employer, and hotel for which he was given chit was only six blocks from terminal; driver was traveling employee and was injured while engaging in reasonable and foreseeable activity reasonably related to his employment. D.C. Code 1981, § 36-301 et seq. Kolson v. District of Columbia Dep't of Empl. Servs., 699 A.2d 357, 1997 D.C. App. LEXIS 187 (1997).

— Burden of proof, arising out of and in course of employment.

Once university employer rebutted statutory presumption of compensability under Workers' Compensation Act by presenting evidence of university employee's pre-existing knee condition and that condition caused injuries, rather than fall while at work, then burden shifted to employee to prove that injury arose out of and in course of employment. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

— Going to or from meals, arising out of and in course of employment.

Injury sustained while an employee is going to or from lunch does not as a positive rule of law, without reference to particular facts, arise out of and in course of employment within Compensation Act. D.C. Code 1940, § 36-501; Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 2(2), 33 U.S.C. §§ 901 et seq., 902(2). Wetzel v. Britton, 170 F.2d 285, 1948 U.S. App. LEXIS 3297 (1948).

— Going to or from work, arising out of and in course of employment.

"Going and coming" rule generally provides that injuries sustained away from the employer's premises, en route to or from work, do not occur in the course of employment and thus will not support award of workers' compensation benefits. Vieira v. District of Columbia Dep't of Empl. Servs., 721 A.2d 579, 1998 D.C. App. LEXIS 224 (1998).

Under District of Columbia Workmen's Compensation Act, the presence or absence of control by employer over acts and movements of employee during transportation to or from work is a factor to be considered in determining whether injury during transportation arose out of and in course of employment, but is not decisive. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note. Cardillo v. Liberty Mut. Ins. Co., 67 S.Ct. 801, 1947 U.S. LEXIS 2874 (U.S.Dist.Col. 1947).

Where contract between employer and union required employer to furnish transportation for work outside District of Columbia and employer performed its contractual obligation by paying travel costs and allowing employees to select transportation method, Deputy Commissioner's finding that fatal injury, received by employee while driving his automobile homeward after terminating day's work, "arose out of and in course of employment", was justified even though employee was not being paid wages at time of accident. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note. Cardillo v. Liberty Mut. Ins. Co., 67 S.Ct. 801, 1947 U.S. LEXIS 2874 (U.S.Dist.Col. 1947).

Except where the employee is paid for making the trip from home to work, where the employer controls the trip, or where the employee is on a special errand for the employer, injuries sustained by employee going to or from work are not compensable under the workmen's compensation statute. Foster v. Massey, 407 F.2d 343, 1968 U.S. App. LEXIS 6745 (C.A.D.C. 1968).

To establish trip-payment exception to general rule that injuries sustained by employee going to or from work are not compensable under the workmen's compensation statute, pay must be specifically identified as related to the trip or the time spent going to or from job site; and it is not enough that before the trip begins workers are on call rather than on fixed schedules, or to argue in the abstract that overall compensation takes account, as background fact, of inconvenience of being on call rather than being on fixed schedule. Foster v. Massey, 407 F.2d 343, 1968 U.S. App. LEXIS 6745 (C.A.D.C. 1968).

Ordinarily, injuries sustained by employees when going to or returning from their regular place of work are not compensable, but there are exceptions to the rule, such as where employer has undertaken to provide the transportation, either directly or by money payments in lieu of transportation. U.S. Fidelity & Guaranty Co. v. Donovan, 221 F.2d 515, 1954 U.S. App. LEXIS 4184 (C.A.D.C. 1954).

Generally, injuries sustained by employees when going to or returning from their regular place of work do not "arise out of and in course of employment", but exception exists where employer requires employees to travel on highways, where employer contracts to and does

furnish transportation to and from work, where employee is subject to emergency calls, or where employee uses highway to do something incidental to his employment, with knowledge and approval of employer. Longshoremen's and Harbor Workers' Compensation Act § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, § 36-501. Liberty Mut. Ins. Co. v. Cardillo, 154 F.2d 529, 1946 U.S. App. LEXIS 3200 (1946).

Where contract between employer and union, requiring employer to furnish transportation for work outside District of Columbia, was modified and employer agreed to pay each employee flat sum of $2 per day as transportation expense and each employee was free to select transportation method, fatal injury received by employee while driving his automobile homeward after terminating day's work did not "arise out of and in course of employment". Longshoremen's and Harbor Workers' Compensation Act § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, § 36-501. Liberty Mut. Ins. Co. v. Cardillo, 154 F.2d 529, 1946 U.S. App. LEXIS 3200 (1946).

Where store manager sent employee to get lunch for all three employees to save time on exceptionally busy day, and employee was struck by automobile while carrying out manager's direction, the employee's fatal injury arose "out of and in course of employment". Longshoremen's and Harbor Workers' Compensation Act § 2(2), 33 U.S.C. § 902(2); D.C. Code 1940, § 36-501. London Guarantee & Accident Co. v. Britton, 138 F.2d 932, 1943 U.S. App. LEXIS 4095 (1943).

Where employer arranged to furnish employee transportation to and from work in employer's truck which regularly passed employee's home in lieu of a requested increase in salary and employee was struck by another vehicle while crossing road to where employer's approaching truck would stop, employee's injuries "arose out of and in course of employment" since the risks attendant on employee's crossing the road were incident to transportation in the truck and were assumed for the mutual convenience of the parties. Longshoremen's and Harbor Workers' Compensation Act, Sec. 1 et seq., 33 U.S.C. 901 et seq.; D.C. Code 1940, Sec. 36-501, 33 U.S.C. 901 note. Ward v. Cardillo, 135 F.2d 260, 1943 U.S. App. LEXIS 4168 (1943).

The general rule that injuries sustained by employee when going to or returning from regular place of work are not deemed to "arise out of and in course of employment" is subject to exceptions, one of which is where the employer contracts to and does furnish transportation to and from work. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note. Ward v. Cardillo, 135 F.2d 260, 1943 U.S. App. LEXIS 4168 (1943).

Injury sustained by insurance agent on his way home at night held compensable as "occurring in course of and arising out of employment," where superior officer had ordered agent to go home and prepare daily written report, which was to be turned in by 8 o'clock on the following morning. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950; D.C. Code 1929, T. 19, c. 2, §§ 11, 12, 33 U.S.C. § 901 note. Proctor v. Hoage, 81 F.2d 555, 1935 U.S. App. LEXIS 3990 (1935).

Generally, an injury sustained by an employee while traveling to and from work is not within scope of workmen's compensation law, but, in District of Columbia, where employer has agreed to, and does furnish, employee with transportation, transportation becomes incident of contract of employment, and any injuries to employee while traveling are within course of employment and within scope of compensation law. Longshoremen's and Harbor Workers' Compensation Act, 1 et seq., 5, 33 U.S.C. 901 et seq., 905; D.C. Code 1951, 36-501; Fed.Rules Civ.Proc. rule 8(c), 18 U.S.C. Shreve v. Hot Shoppes, Inc., 184 F.Supp. 436, 1960 U.S. Dist. LEXIS 4092 (D.D.C1960).

— Injury before or after working hours, arising out of and in course of employment.

While employee must have a reasonable time within which to leave employer's premises after his duties are finished for the day, if, for his own purposes, he tarries for some time after working hours, he is no longer in employment status under the workmen's compensation act and any injuries sustained during that period are not compensable. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1951, § 36-501. Great Am. Indem. Co. v. Britton, 186 F.Supp. 938, 1960 U.S. Dist. LEXIS 4250 (D.D.C1960).

Injury which occurred in confines of apartment provided to workers' compensation claimant as living quarters by employer did not arise out of employment nor did it occur within course of employment, and claimant was thus not entitled to benefits; claimant was neither working at time of injury nor required to be working when injury was incurred. D.C. Code 1981, §§ 36-301(12), 36-303. Mosley v. District of Columbia Dep't of Employment Services, 573 A.2d 776, 1990 D.C. App. LEXIS 85 (1990).

Furnishing apartment to employee rent free does not necessarily mean that any injury which occurs in apartment is compensable injury, unless premises are so remote from other places of habitation that worker has little practical choice other than to accept offered living quarters. D.C. Code 1981, §§ 36-301(12), 36-

303. Mosley v. District of Columbia Dep't of Employment Services, 573 A.2d 776, 1990 D.C. App. LEXIS 85 (1990).

— Positional risk standard, arising out of and in course of employment.

If, in course of employment, employee suffers injury by reason of risk incidental to location where employment requires him to be, injury arises out of employment. Amalgamated Asso. of Street, etc. Employees v. Adler, 340 F.2d 799, 1964 U.S. App. LEXIS 3625 (C.A.D.C. 1964).

Under the "positional risk" doctrine, an employee's injury arises out of his employment, within the meaning of the Workers' Compensation Act, so long as it would not have happened but for the fact that conditions and obligations of the employment placed claimant in a position where he was injured. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

Under positional-risk test for determining whether an injury "arises out of" employment for purposes of Worker's Compensation Act, an injury arises out of employment so long as it would not have happened but for the fact that conditions and obligations of the employment placed claimant in the position where she was injured. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

Workers' compensation statute requiring that injury arise out of, and in course of, employment embodies "positional-risk standard," by which injury arises out of employment so long as it would not have happened but for fact that conditions and obligations of employment placed claimant in position where he was injured. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 821 A.2d 898, 2003 D.C. App. LEXIS 223 (2003).

"Positional-risk standard," which is used to determine whether injury arises out of employment for workers' compensation purposes, is a liberal standard which obviates any requirement of employer fault or of causal relationship between nature of employment and the risk of injury; nor need claimant be engaged at time of injury in activity of benefit to employer. Clark v. District of Columbia Dep't of Empl. Servs., 743 A.2d 722, 2000 D.C. App. LEXIS 8 (2000).

Pursuant to positional-risk test, injury arises out of employment, for workers' compensation purposes, so long as it would not have happened but for fact that conditions and obligations of employment placed claimant in position where he was injured, and as such, this theory supports compensation in cases of stray bullets, roving lunatics, and other situations in which only connection of employment with injury is that its obligations placed claimant in particular place at particular time when he was injured by neutral force. Clark v. District of Columbia Dep't of Empl. Servs., 743 A.2d 722, 2000 D.C. App. LEXIS 8 (2000).

"Positional-risk standard," incorporating but-for test, may be applied in deciding whether injury arose out of employment for purposes of determining compensability; standard furthers purpose of providing financial and medical benefits to employees injured in work-related accidents and accords with general policy that workers' compensation statutes should be liberally construed. Grayson v. District of Columbia Dep't of Employment Services, 516 A.2d 909, 1986 D.C. App. LEXIS 467 (1986).

— Skylarking and practical jokes, arising out of and in course of employment.

Where following removal of freight from railroad box car claimant lifted coworker from floor and in ensuing struggle both fell to floor with resulting injury to claimant and claimant during same morning and against remonstrances of intended victim had indulged in similar prank, the injury did not "arise out of and in course of employment". Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, §§ 36-501, 36-502, 33 U.S.C. § 901 note. Ackerman v. Cardillo, 140 F.2d 348, 1944 U.S. App. LEXIS 4381 (1944).

— Slips, trips, and falls, arising out of and in course of employment.

Fatal injury to newspaper solicitor due to stumbling, slipping, or sudden dizziness while crossing street, resulting in fractured skull, held to "arise out of" as well as "in course of" employment. Longshoremen's and Harbor Workers' Compensation Act, § 2(2), 33 U.S.C. § 902(2); D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. New Amsterdam Casualty Co. v. Hoage, 62 F.2d 468, 1932 U.S. App. LEXIS 3205 (1932).

— Traveling employees, arising out of and in course of employment.

Where salesman was fatally injured in automobile accident while on way back to his office in District of Columbia from a business trip in Pennsylvania, the salesman's death was compensable since it "arose out of employment". Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; D.C. Code 1940, §§ 36-501, 36-502, 33 U.S.C. § 901 note. B.F. Goodrich Co. v. Britton, 139 F.2d 362, 1943 U.S. App. LEXIS 4055 (1943).

If work of an employee creates a necessity for travel, while traveling he is "in the course of his employment," though he is serving at the same time some purpose of his own. Williams v. American Employers' Ins. Co., 107 F.2d 953, 1939 U.S. App. LEXIS 4688 (1939).

Where evidence disclosed that truck driver's helper was under exclusive supervision of driver, that driver purchased automobile for his personal use, that driver ordered helper to drive automobile behind truck with intention of turning off road at some point distant and proceeding to driver's home where automobile was to be left before continuing to employer's plant to reload truck, that while returning on direct route to employer's plant and before arriving at a junction of road leading to driver's home automobile driven by helper was sideswiped, and that helper was injured, evidence sustained finding that helper sustained a compensable injury which "arose out of and in course of employment." Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Williams v. American Employers' Ins. Co., 107 F.2d 953, 1939 U.S. App. LEXIS 4688 (1939).

Employee is engaged in "course of his employment" in taking trip if employer's work creates necessity for trip, though employee uses opportunity to serve, at the same time, some purpose of his own. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; D.C. Code 1929, T. 19, §§ 11, 12. Employers' Liability Assur Corporation Limited v. Hoage, 69 F.2d 227, 1934 U.S. App. LEXIS 3499 (1934).

Injury arises "in the course of employment" for workers' compensation purposes, when traveling employee is injured while engaging in reasonable and foreseeable activity that is reasonably related to or incidental to his or her employment. Kolson v. District of Columbia Dep't of Empl. Servs., 699 A.2d 357, 1997 D.C. App. LEXIS 187 (1997).

Authority of agency.

As the agency recognized as having special competence to decide matters within its expertise, the Department of Employment Services is entrusted in the first instance with responsibility to interpret the Workers' Compensation Act. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

As the agency recognized as having special competence to decide matters within its expertise, the Department of Employment Services (DOES) is entrusted in the first instance with responsibility to interpret the Workers' Compensation Act. Grand Hyatt Wash. v. D.C. Dep't of Empl. Servs., 963 A.2d 142, 2008 D.C. App. LEXIS 489 (2008).

Casual employees.

The employment of tank and pump mechanic three or four times in four or five years to do repair work on gasoline station tanks was "casual" and not in "usual course" of business of operator of station, and hence injuries sustained in doing work were not compensable. D.C. Code 1929, T. 19, §§ 11, 12; 33 U.S.C. § 901 note; Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq. Cardillo v. Mockabee, 102 F.2d 620, 1939 U.S. App. LEXIS 4818 (1939).

Trust company's employment of ornamental ironworker to repair door in grill work in banking house held "casual employment" not in usual course of employer's trade or business," so that ironworker's death resulting from accident sustained in employment was not compensable. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950; D.C. Code 1929, T. 19,§§ 11, 12, 33 U.S.C. § 901 note. Hoage v. Hartford Accident & Indemnity Co., 77 F.2d 381, 1935 U.S. App. LEXIS 4606 (1935).

Evidence supported conclusion that an employer/employee relationship existed between sole proprietor and workers' compensation claimant, who was sole proprietor's brother-in-law, as necessary for claimant to be eligible for benefits; claimant's lack of specialized skill or professional service that he was providing and, that his work was unskilled made it more likely that claimant was sole proprietor's employee, 26-month period of claimant's employment spanned nearly the entirety of sole proprietor's existence, and pushed the nature of claimant's relationship with sole proprietor beyond "casual" to reflect more of an employer/employee relationship, and even if claimant's work was intermittent, this did not preclude the existence of an employer/employee relationship. Reyes v. D.C. Dep't of Empl. Servs., 48 A.3d 159, 2012 D.C. App. LEXIS 317 (2012).

Compensation.

Under Workmen's Compensation Act, "compensation" means money relief afforded according to scale established under the statute as differentiated from "compensatory damages" recoverable in an action at law for breach of contract or for a tort. D.C. Code 1961, § 36-501; Longshoremen's and Harbor Workers' Compensation Act, §§ 1-50, 33 U.S.C. §§ 901-950. See also Howard v. Lightner, 214 A.2d 474, 9 A.L.R.3d 513 (App. 1965). Garcia v. De Leon, 59 A.2d 637, 1948 D.C. App. LEXIS 153 (Cr.App. 1948).

Causally related medical expenses are not considered "compensation" within meaning of workers' compensation statute providing that notice of any injury in respect of which "compensation" is payable shall be given to employer within 30 days after the date of such injury, and thus, claims for causally related medical expenses are not barred by the failure of the employee to give the notice required by statute. Safeway Stores, Inc. v. D.C. Dep't of Empl.

Servs., 832 A.2d 1267, 2003 D.C. App. LEXIS 570 (2003).

Construction and application.

Workers' compensation statutes are to be liberally construed for the benefit of the employee. D.C. Code 1981, § 36-301 et seq. Hively v. District of Columbia Dep't of Empl. Servs., 681 A.2d 1158, 1996 D.C. App. LEXIS 171 (1996).

Workmen's compensation acts should be construed liberally in furtherance of their purpose and, if possible so as to avoid incongruous or harsh results. Longshoremen's and Harbor Workers' Compensation Act § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Maryland Casualty Co. v. Cardillo, 107 F.2d 959, 1939 U.S. App. LEXIS 4689 (1939).

Scientist's negligence, intentional and negligent infliction of emotional distress, and strict liability claims against his employer's parent corporation, arising from his alleged exposure during a "clandestine experiment" to the pathogen causing Bovine Spongiform Encephalopathy, commonly known as "mad-cow disease," fell within the exclusive parameters of the District of Columbia's Workers' Compensation Act (WCA), and thus scientist's claims were barred. Doe v. United States, 797 F.Supp.2d 78, 2011 U.S. Dist. LEXIS 76466 (2011).

Scientist's negligence, intentional and negligent infliction of emotional distress, and strict liability claims against his employer, the subsidiary of a government contractor, arising from his alleged exposure during a "clandestine experiment" to the pathogen causing Bovine Spongiform Encephalopathy, commonly known as "mad-cow disease," fell within the exclusive parameters of the District of Columbia's Workers' Compensation Act (WCA), and not the exclusion for injuries specifically intended by an employer, and thus scientist's claims were barred; even if scientist had unknowingly participated in a "clandestine experiment," in that his coworkers had purposefully bypassed established safety protocol regarding the experiments with the intention of keeping their activities a secret, then subsidiary cannot be said to have intended his injury. Doe v. United States, 797 F.Supp.2d 78, 2011 U.S. Dist. LEXIS 76466 (2011).

There were substantial questions as to whether an employee's claim for injuries arising from his alleged false imprisonment was covered under the District of Columbia's (DC) Workers' Compensation Act (WCA), and thus, the claim had to be brought before the DC Department of Employment Services (DOES) for a determination in the first instance; there were issues as to whether the corporate employer's officials were acting directly with the full authority and as the alter ego of the corporate entity and whether, if so, they acted with the specific intent to harm the employee. Hamilton v. Sanofi-Aventis U.S., Inc., 628 F.Supp.2d 59, 2009 U.S. Dist. LEXIS 53136 (2009).

Neither the Director of the District of Columbia Department of Employment Services nor the Court of Appeals may interpret the Workers' Compensation Act in such a way that prevents those with preexisting conditions from establishing that they are entitled to compensation, as to do so would ignore the aggravation rule and be inconsistent with a humanitarian act whose principal purpose is to compensate employees for injuries they prove to be work-related. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

Court of Appeals follows the principle that workers' compensation statutes should be liberally construed to achieve their humanitarian purpose. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

While the Court of Appeals is the final authority on questions of statutory construction, and its review is de novo, the Court will defer to the interpretation of the Director of Department of Employment Services of the Workers' Compensation Act if his interpretation is reasonable in light of the Act's language, its legislative history, and judicial precedent. Hart v. D.C. Dep't of Empl. Servs., 843 A.2d 746, 2004 D.C. App. LEXIS 59 (2004).

Workers' compensation law must be construed liberally for the benefit of employees and their dependents. Murray v. District of Columbia Dep't of Empl. Servs., 765 A.2d 980, 2001 D.C. App. LEXIS 13 (2001).

Workers' compensation laws are to be liberally construed for a claimant's benefit, and while this principle allows doubts to be resolved favorably to claimant, it does not relieve courts of the obligation to apply the law as it is written and in accordance with its plain meaning. National Geographic Soc'y v. District of Columbia Dep't of Empl. Servs., 721 A.2d 618, 1998 D.C. App. LEXIS 236 (1998).

Construction with other laws.

While the Workers' Compensation Act (WCA) applies to private-sector employees in the District of Columbia, the disability-compensation chapter of the Government Comprehensive Merit Personnel Act (CMPA) governs disability claims of District of Columbia employees. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

Construction with Longshoreman's Act.

Injuries incurred prior to effective date of 1979 Workers' Compensation Act continued to be governed by prior law. Longshore and Harbor Workers' Compensation Act, §§ 1-51, 33

U.S.C. §§ 901-950; D.C. Code 1981, §§ 36-301 to 36-345, 36-501, 36-502. Gustafson v. International Progress Enterprises, 832 F.2d 637, 1987 U.S. App. LEXIS 14926 (C.A.D.C. 1987).

District of Columbia Workers' Compensation Act was "local" law, as to which interpretation of District of Columbia Court of Appeals would be given deference, even though Act merely applied terms of federal Longshore and Harbor Workers' Act. D.C. Code 1981, § 36-301 et seq.; Longshore and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq. Hall v. C & P Tel. Co., 809 F.2d 924, 1987 U.S. App. LEXIS 1273 (C.A.D.C. 1987).

Longshoremen's and Harbor Workers' Compensation Act should be construed liberally in favor of employees and their dependents and it is in their favor that doubts, including the factual, are to be resolved. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-50 as amended 33 U.S.C. §§ 901-950; D.C. Code § 36-501. Wheatley v. Adler, 407 F.2d 307, 1968 U.S. App. LEXIS 6912 (C.A.D.C. 1968).

Decisions construing the Longshore and Harbor Workers' Compensation Act are persuasive authority in construing Workers' Compensation Act since Workers' Compensation Act was modeled after the Longshore Act. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 832 A.2d 1267, 2003 D.C. App. LEXIS 570 (2003).

Injuries incurred before effective date of Workers' Compensation Act are governed by LHWCA. Longshore and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1981, § 36-301 et seq. Harris v. District of Columbia Office of Worker's Compensation, 660 A.2d 404, 1995 D.C. App. LEXIS 135 (1995).

District of Columbia Workers' Compensation Act of 1979 covers worker's injury or disease if employment events giving rise to injury occurred before Act took effect, but worker did not become aware of injury and its job-relatedness until after that time, unless there is no subject matter jurisdiction of claim under Act or other state law, in which event Longshore and Harbor Workers' Compensation Act, as extended by Congress to District of Columbia private sector workers, applies. D.C. Code 1981, § 36-301 et seq.; Longshore and Harbor Workers' Compensation Act, §§ 1-51, as amended, 33 U.S.C. §§ 901-950. Railco Multi-Construction Co. v. Gardner, 564 A.2d 1167, 1989 D.C. App. LEXIS 196 (1989).

Authoritative judicial interpretation of Longshoremen's and Harbor Workers' Compensation Act should generally control meaning of District of Columbia Workmen's Compensation Act of 1928. D.C. Code 1981, § 36-301 et seq.; Longshore and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq. Estep v. Construction General, Inc., 546 A.2d 376, 1988 D.C. App. LEXIS 118 (1988).

Where the District of Columbia Workers' Compensation Act of 1928 [D.C. Code 1981, §§ 36-501, 36-502] which made the provisions of the Longshoremen's and Harbor Workers' Compensation Act [33 U.S.C. § 901 et seq.] applicable to the District of Columbia had been effectively repealed prior to date that Congress amended the LHWCA to allow an injured employee to sue a third-party tort-feasor more than six months after receiving a workers' compensation award if the employer has not yet instituted such a suit, the congressional amendment was inapplicable to the rights of an injured worker whose suit against a third-party tort-feasor was governed by the repealed District of Columbia Act and worker could not maintain the action more than six months after receiving a workers' compensation award. Longshoremen's and Harbor Workers' Compensation Act, § 33(b), 33 U.S.C. § 933(b). O'Connell v. Maryland Steel Erectors, Inc., 495 A.2d 1134, 1985 D.C. App. LEXIS 431 (1985), writ of certiorari denied by 475 U.S. 1066, 106 S. Ct. 1378, 89 L. Ed. 2d 603, 1986 U.S. LEXIS 787, 54 U.S.L.W. 3598 (1986).

Disabilities.

Or the purposes of disability payments under the Workers' Compensation Act, "disability" means physical or mental incapacity because of an injury which results in the loss of wages; disability is an economic and not a medical concept. Georgetown Univ. Hosp. v. D.C. Dep't of Empl. Servs., 929 A.2d 865, 2007 D.C. App. LEXIS 473 (2007).

Final decision of ALJ to deny compensation, based on finding that workers' compensation claimant failed to offer sufficient proof of both the nature and extent of his incapacity to work as a transit authority bus driver, did not follow rationally from the factual findings that were supported by substantial evidence; the ALJ found facts that identified the nature of the incapacity, and the only conclusion that flowed rationally from the facts that were found was that the nature of claimant's disability was chronic pain in his back and wrist that eventually resolved and chronic pain in his right knee that continued throughout the course of both periods for which he claimed temporary total disability. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

For purposes of the worker's compensation statute, "disability" is not defined medically as it is, for example, in a personal injury matter; rather, it is defined statutorily as an economic concept, and any incapacity arising from a work-related injury that results in lost wages is a disability. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

ALJs have discretion in determining disability percentage ratings and disability awards because, as used in the Workers' Compensation Act, "disability" is an economic and legal concept which should not be confounded with a medical condition. Negussie v. D.C. Dep't of Empl. Servs., 915 A.2d 391, 2007 D.C. App. LEXIS 7 (2007).

Disability, as defined in Workers' Compensation Act, ultimately requires a legal determination. Negussie v. D.C. Dep't of Empl. Servs., 915 A.2d 391, 2007 D.C. App. LEXIS 7 (2007).

Disability is an economic concept rather than a medical condition, for purposes of workers' compensation. Wash. Post v. D.C. Dep't of Empl. Servs., 853 A.2d 704, 2004 D.C. App. LEXIS 372 (2004).

In general, except in the case of a "schedule" injury enumerated in statute, a continuing injury that does not result in any loss of wage earning capacity cannot be the foundation for a finding of disability. Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs., 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

Disability is an economic and not a medical concept. Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs., 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

The Workers' Compensation Act is a wage loss statute, and disability means injury that results in wage loss. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

"Disability" is an economic and not a medical concept, and any injury that does not result in loss of wage-earning capacity cannot be the foundation for a finding of disability, as basis for workers' compensation benefits. Upchurch v. D.C. Dep't of Empl. Servs., 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

In the context of the Workers' Compensation Act, disability is an economic concept rather than simply a medical one, and therefore it cannot be determined solely by the claimant's physical condition; there must also be taken into consideration the claimant's age, his industrial history, and the availability of the type of work which he can do. Pro-Football, Inc. v. District of Columbia Dep't of Empl. Servs., 782 A.2d 735, 2001 D.C. App. LEXIS 217 (2001).

Preexisting condition is likely to be hindrance or obstacle to obtaining employment, so as to be considered "physical impairment" under the Special Fund provision of Workers' Compensation Act, if it would reasonably cause potential employer to be reluctant to hire person because of: fear that it will make person less capable worker, fear that it will make the person greater risk in terms of getting injured, or fear that it will make the person greater risk in terms of degree of disability that the person would suffer from injury. D.C. Code 1981, § 36-301(17). Red Star Express v. District of Columbia Dep't of Employment Services, 606 A.2d 161, 1992 D.C. App. LEXIS 88 (1992).

Evidence of medical expert that excessive dose of methadone causes sleepiness, absent statement that dosage taken by employee was excessive, was insufficient to show that employee's drug dependency was previous "physical impairment" causing "substantially greater disability," so as to qualify employer for reimbursement of workers' compensation payments from Special Fund. D.C. Code 1981, §§ 36-301(8, 17), 36-308(6). Red Star Express v. District of Columbia Dep't of Employment Services, 606 A.2d 161, 1992 D.C. App. LEXIS 88 (1992).

Worker who suffered work-related back injury, was retained in light-duty job at former wage level, and subsequently resigned to take higher-paying job, which he was unable to perform because of his back injury, was not "disabled" for purposes of Workers' Compensation Act. D.C. Code 1981, §§ 36-301 et seq., 36-301(8, 19), 36-308(3)(V), (5). Powers v. District of Columbia Dep't of Employment Services, 566 A.2d 1068, 1989 D.C. App. LEXIS 272 (1989).

Employees.

Where lease, occupancy permit, and insurance against fire and theft were all in name of operator of parking lot alone, both before and after making of "partnership agreement" with deceased parking lot attendant which contained no provision for distribution of profits, deceased was not a "partner", but an "employee", and his death was compensable. Longshoremen's and Harbor Workers' Compensation Act § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note. Davison v. Cardillo, 143 F.2d 154, 1944 U.S. App. LEXIS 4290 (1944).

Business agent of labor union, fatally injured in automobile accident while returning from investigation of labor conditions, held "employee". Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950; D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Standard Accident Ins. Co. v. Hoage, 66 F.2d 275, 1933 U.S. App. LEXIS 2619 (1933).

Where there is a complete absence of any request to set aside a default or suggestion by a defendant that it has a meritorious defense, it is clear that the standard for default judgment has been satisfied. United States v. Bentley, 756 F.Supp.2d 1, 2010 U.S. Dist. LEXIS 127053 (2010).

District of Columbia statute prohibiting retaliation against employees for filing workers' compensation claim does not apply to employees of federal or District of Columbia governments. Heasley v. D.C. Gen. Hosp., 180 F.Supp.2d 158, 2002 U.S. Dist. LEXIS 52 (2002).

Client's status as an illegal alien prevented him from recovering on his workers' compensation claim, and thus even if attorney was negligent in failing to file client's claim before the expiration of the statute of limitations, client was not entitled to any recovery, in legal malpractice case against attorney and law firm; client used the name and social security card and number of another, he fraudulently concealed his true identity from his employer, attorneys, and the court, and caselaw provided that illegal aliens were not "employees," for the purpose of the workers' compensation statutes, and thus they were ineligible to receive benefits. Marboah v. Ackerman, 877 A.2d 1052, 2005 D.C. App. LEXIS 335 (2005).

Claimant, a sole proprietor and resident of Maryland, was not entitled to workers' compensation for injuries he sustained in District of Columbia while installing television cable, given that claimant conceded he did not meet definition of an "employee" under Workers' Compensation Act, and that District of Columbia, unlike Maryland statute, did not allow a sole proprietor to be covered as though he were an employee. Stevenson v. D.C. Dep't of Empl. Servs., 845 A.2d 523, 2004 D.C. App. LEXIS 77 (2004).

Provision in workers' compensation statute defining an employee requires that the Court of Appeals to first determine if there is an express or implied contract for hire, as an essential feature of an employment relationship, and if such a contract is present, to next determine whether that contract creates an employer/employee relationship or whether an independent contractor relationship exists. Gross v. D.C. Dep't of Empl. Servs., 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

In determining whether an employer/employee relationship exists for workers' compensation purposes focuses, the Director of the Department of Employment Services (DOES) applies a "relative nature of work" test. Gross v. D.C. Dep't of Empl. Servs., 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

Relative nature of work test for determining whether claimant is an "employee" for workers' compensation purposes focuses on whether the claimant is hired to do work in which the company specializes. Gross v. D.C. Dep't of Empl. Servs., 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

There are two parts to the relative nature of the work test for determining whether claimant is an "employee" for workers' compensation purposes: first, one must examine the nature and character of the claimant's work or business, and second, one must examine the relationship of the claimant's work to the purported employer's business; under the first part, one must consider the degree of skill involved, the degree to which it is a separate calling or business, and the extent to which it can be expected to carry its own accident burden, whereas under the second part, one must consider the extent to which claimant's work is a regular part of the employer's regular work, whether claimant's work is continuous or intermittent, and whether the duration is sufficient to amount to the hiring of continuing services, as distinguished from contracting for the completion of a particular job. Gross v. D.C. Dep't of Empl. Servs., 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

ALJ was precluded from finding that workers' compensation claimant was not entitled to workers' compensation benefits because he was not an employee at time of his work injury without considering contrary evidence that indicated that claimant's testimony that he received work orders from supervisor for the employer was uncontested; documents the ALJ failed to consider included a report that appeared to show that claimant submitted reports as proof of work completed, that a supervisor signed off, dated the forms as received, and sent them to the employer for payment before the accident. Gross v. D.C. Dep't of Empl. Servs., 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

Workers' compensation claimant was employee of hospital, for purposes of workers' compensation statute, at time he received job-required MMR (measles, mumps, and rubella) vaccination, even though claimant had not yet reported for work, where claimant had been hired and was employee subject only to requirement that he be vaccinated before starting job. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 821 A.2d 898, 2003 D.C. App. LEXIS 223 (2003).

Under the relative nature of the work test for determining whether claimant is an "employee" for workers' compensation purposes, an employment relationship, rather than an independent contractor relationship, is found when the work being done is an integral part of the regular business of the employer, and when claimant, relative to the employer, does not furnish an independent business or professional service. Munson v. District of Columbia Dep't of Empl. Servs., 721 A.2d 623, 1998 D.C. App. LEXIS 233 (1998).

Undocumented alien was entitled to workers' compensation coverage under the Workers' Compensation Act; the Act excepted certain specified categories of workers from the definition of "employee," but otherwise set out a broad definition that neither excluded undocumented aliens nor made a worker's immigration status relevant, legislature had made several amendments to definition of "employee" without expressly excluding undocumented aliens, and this reasoning was consistent with longstanding interpretation of Department of

Employment Services (DOES) that undocumented-alien claimant who used false documents to obtain work was not foreclosed from claiming benefits. Asylum Co. v. D.C. Dep't of Empl. Servs., 10 A.3d 619, 2010 D.C. App. LEXIS 732 (2010).

Employer.

Regulations which required government to have employer procure workers' compensation insurance and then to reimburse employer for reasonable cost of that insurance did not render government "employer" within meaning of District of Columbia Workers' Compensation Act; thus, government was not immune from liability under provision of District of Columbia's Workers' Compensation Act [D.C. Code 1981, § 36-304] governing exclusiveness of liability and remedy. D.C. Code 1981, §§ 36-301 to 36-345. Allen v. United States, 625 F. Supp. 841, 1986 U.S. Dist. LEXIS 30729 (1986).

Before a person can be held as a joint, or special, employer under workers' compensation, there must be a contract of hire, express or implied, between the employee and the dual or borrowing employer. Union Light & Power Co. v. D.C. Dep't of Empl. Servs., 796 A.2d 665, 2002 D.C. App. LEXIS 85 (2002).

Although acceptance of the control and authority of a special or dual employer may indicate consent, for purposes of workers' compensation, the right to control a servant's conduct cannot be inferred from facts which do not indicate the employee's consent. Union Light & Power Co. v. D.C. Dep't of Empl. Servs., 796 A.2d 665, 2002 D.C. App. LEXIS 85 (2002).

"Employer" in the context of the corporation, and for purposes of action under Longshoremen's and Harbor Workers' Compensation Act provision excepting from exclusive remedies clause the purposeful injury of employee is a person who is realistically the alter ego of the corporation and not merely a foreman, supervisor, or manager. D.C. Code 1981, § 36-301 et seq.; Longshoremen's and Harbor Workers' Compensation Act, § 5(a), as amended, 33 U.S.C. § 905(a). Rustin v. District of Columbia, 491 A.2d 496, 1985 D.C. App. LEXIS 352 (1985), writ of certiorari denied by 474 U.S. 946, 106 S. Ct. 343, 88 L. Ed. 2d 290, 1985 U.S. LEXIS 4230, 54 U.S.L.W. 3309 (1985).

Injury, generally.

Any attack of an occupational disease, whether an initial one or one following a symptom-free period, if it arises naturally out of the employment, is an "injury" within definition of term in Longshoremen's Compensation Act. Longshoremen's and Harbor Workers' Compensation Act, § 2(2), 33 U.S.C. § 902(2). D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note. Cadwallader v. Sholl, 196 F.2d 14, 1951 U.S. App. LEXIS 3696 (C.A.D.C. 1951).

Where an employer is a corporation, only actions by an individual who is realistically the alter ego of the corporation and not merely a foreman, supervisor or manager can be treated as the intentional acts of the employer itself, for purposes of the District of Columbia's Workers' Compensation Act (WCA) provision stating that the term "injury" does not include the intentional acts of an employer. Hamilton v. Sanofi-Aventis U.S., Inc., 628 F.Supp.2d 59, 2009 U.S. Dist. LEXIS 53136 (2009).

The District of Columbia's Workers' Compensation Act (WCA) covers injuries that are the result of willful and intentional conduct of either a fellow employee or a third party, so long as the employer did not intend those parties' actions. Vanzant v. Wash. Metro. Area Transit Auth., 557 F.Supp.2d 113, 2008 U.S. Dist. LEXIS 42788 (2008).

To show that an injury is compensable under the Workers Compensation Act, the employee must establish that the work event or condition at issue was the cause of the claimed injury, that is, that the injury is in fact work-related. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

In appropriate circumstances, an emotional injury alone may be compensable under the Workers' Compensation Act. Wright v. D.C. Dep't of Empl. Servs., 924 A.2d 284, 2007 D.C. App. LEXIS 234 (2007).

Any injury that does not result in a loss of wage-earning capacity cannot be the foundation for a finding of disability in a proceeding for workers' compensation benefits. Wash. Post v. D.C. Dep't of Empl. Servs., 853 A.2d 704, 2004 D.C. App. LEXIS 372 (2004).

Workers' Compensation Act's definition of "injury" includes intentional assaults on employees by third parties, i.e., persons other than the employer. D.C. Code 1981, § 36-301(12). Clark v. District of Columbia Dep't of Empl. Servs., 743 A.2d 722, 2000 D.C. App. LEXIS 8 (2000).

Aggravation of preexisting condition may constitute a compensable accidental injury under Workers' Compensation Act, and fact that other, nonemployment-related factors may also have contributed to, or additionally aggravated claimant's malady, does not affect claimant's right to compensation under the aggravation rule. D.C. Code 1981, § 36-308(6)(A). King v. District of Columbia Dep't of Empl. Servs., 742 A.2d 460, 1999 D.C. App. LEXIS 285 (1999).

To be compensable under Workers' Compensation Act, injury must be either accidental injury that arises out of and in course of employment or occupational disease or infection that arises naturally out of such employment or as naturally or unavoidably results from such

accidental injury. Charles P. Young Co. v. District of Columbia Dep't of Empl. Servs., 681 A.2d 451, 1996 D.C. App. LEXIS 153 (1996).

For workers' compensation claimant to establish that rupture of berry aneurysm arose out of his employment, claimant was not required to prove that rupture was precipitated by unusual exertion where claimant was engaged at or near time of injury in job-related activities both stressful in themselves and made more so by immediate circumstances. D.C. Code 1981, § 36-301(12). Capital Hilton Hotel v. District of Columbia Dep't of Employment Services, 565 A.2d 981, 1989 D.C. App. LEXIS 222 (1989).

Jurisdiction.

Workers' compensation claimant's employment was not principally localized in the District of Columbia, and thus, the District of Columbia Department of Employment Services (DOES) lacked subject matter jurisdiction over his claim; claimant was injured while working in the Republic of Georgia, employer's business was internationally oriented and apparently geared toward staffing projects in other parts of the world, claimant's employment had substantially more ties to the Republic of Georgia than the District, he performed the principal service for which he was hired in the Republic of Georgia, and his base of operations was Tblisi, the Republic of Georgia, and his personal ties during his employment were more significant in Virginia where he and his wife maintained their home, and later, in California where he resided with his son. Furtick v. D.C. Dep't of Empl. Servs., 921 A.2d 787, 2007 D.C. App. LEXIS 222 (2007).

Presumptions and burden of proof.

When a claimant seeks compensation for a psychological injury that allegedly resulted from a work-related accidental physical injury and triggers the statutory presumption that the claim comes within the provisions of the Workers' Compensation Act (WCA), the claimant must show that the physical accident had the potential of resulting in or contributing to the psychological injury; where the presumption is either inapplicable or has been rebutted, the burden falls on the claimant to prove by a preponderance of the evidence that the physical accident caused or contributed to the psychological injury. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

Once a claimant shows that she has a work-related impairment, she is entitled to a finding of disability unless the employer demonstrates availability of suitable alternative employment. Georgetown Univ. Hosp. v. D.C. Dep't of Empl. Servs., 929 A.2d 865, 2007 D.C. App. LEXIS 473 (2007).

The law does not require a claimant seeking disability benefits to prove a causal relationship by introducing evidence that specifically links the disability to the work-related injury; rather, the law in the District of Columbia creates a presumption that once a claimant demonstrates a work-related injury and a subsequent disability, the claim comes within the provisions of the Workers' Compensation Act. Georgetown Univ. Hosp. v. D.C. Dep't of Empl. Servs., 929 A.2d 865, 2007 D.C. App. LEXIS 473 (2007).

Purpose.

A prime purpose of the District of Columbia Workmen's Compensation Act is to provide residents of the District with a practical and expeditious remedy for their industrial accidents and to place on District of Columbia employers a limited and determinate liability. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note. Cardillo v. Liberty Mut. Ins. Co., 67 S.Ct. 801, 1947 U.S. LEXIS 2874 (U.S.Dist.Col. 1947).

District of Columbia Workmen's Compensation Act is designed to alleviate suffering of injured workers by spreading cost of their injuries among purchasers of their products, and thus must be interpreted liberally in favor of injured claimants. D.C. Code § 36-501. Director, Office of Workers' Compensation Programs, etc. v. National Van Lines, Inc., 613 F.2d 972, 1979 U.S. App. LEXIS 10555 (C.A.D.C. 1979), writ of certiorari denied by 448 U.S. 907, 100 S. Ct. 3049, 65 L. Ed. 2d 1136, 1980 U.S. LEXIS 2467, 104 L.R.R.M. (BNA) 2688 (1980).

The purpose of the Workmen's Compensation Act is to provide not only for employees a remedy which is both expeditious and independent of proof of fault, but also for employers a liability which is limited and determinative. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 5, 33 U.S.C. §§ 901 et seq., 905; D.C. Code 1951, § 36-501, 33 U.S.C. § 901 note. Smither & Co. v. Coles, 242 F.2d 220, 1957 U.S. App. LEXIS 4688 (C.A.D.C. 1957).

The purpose of the Workmen's Compensation Act is to substitute fixed payments for personal injuries sustained or death caused in the course of employment for the common-law cause of action for damages. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1951,§§ 36-501, 36-502, 33 U.S.C. § 901 note. Brown v. Curtin & Johnson, Inc., 117 F.Supp. 830, 1954 U.S. Dist. LEXIS 4646 (D.D.C1954).

Purpose of statutory mandate for workers' compensation is to guarantee quick and efficient benefits to victims of work-related injuries. D.C. Code 1981,§ 36-301 et seq. In re

Gerald T. Fenton, Inc., 178 B.R. 582, 1995 Bankr. LEXIS 249 (1995).

Purpose of workers' compensation laws, which is to provide financial and medical benefits to employees injured in work-related accidents, is a humanitarian one. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

Purpose of Workers' Compensation Act is to advance the humanitarian goal to provide compensation to employees for work-related disabilities reasonably expeditiously, even in arguable cases. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 827 A.2d 35, 2003 D.C. App. LEXIS 422 (2003).

Purpose of Workers' Compensation Act is to advance humanitarian goal of statute to provide compensation to employees for work-related disabilities reasonably expeditiously, even in arguable case. D.C. Code 1981, § 36-301 et seq. Brown v. District of Columbia Dep't of Empl. Servs., 700 A.2d 787, 1997 D.C. App. LEXIS 229 (1997).

Workers' compensation law is intended to compensate for job-related injuries, not to insure job security. Clair v. District of Columbia Dep't of Employment Servs., 658 A.2d 1040, 1995 D.C. App. LEXIS 106 (1995).

Review.

In affirming ALJ's grant of temporary total disability benefits based on its determination that idiopathic falls from level surfaces were compensable under the Workers' Compensation Act if it arose "even in part" out of claimant's employment, Compensation Review Board was required to describe analytic framework it followed in reaching such determination. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

Administrative law judge's (ALJ) findings that university employee slipped and fell on his way back to work station, but that, even if he did not slip on water, injury arose in course of employment because employee was walking or standing at time of fall, which activities were part of job, did not provide clear basis for determination that injuries were compensable under Workers' Compensation Act, thus precluding meaningful appellate review of order. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

Argument by workers' compensation claimant diagnosed with chronic fatigue syndrome that Department of Employment Services (DOES) failed to accommodate her disability during administrative hearings as required by the Americans with Disabilities Act (ADA), could not be raised by claimant in her appeal of decisions by Director of DOES in workers' compensation proceeding, as the scope of review in workers' compensation proceedings was limited to the decision of the Director of DOES under the Workers' Compensation Act, which did not include claims under the ADA. Hisler v. D.C. Dep't of Empl. Servs., 950 A.2d 738, 2008 D.C. App. LEXIS 272 (2008).

Special employee.

Once university employer rebutted statutory presumption of compensability under Workers' Compensation Act by presenting evidence of university employee's pre-existing knee condition and that condition caused injuries, rather than fall while at work, then burden shifted to employee to prove that injury arose out of and in course of employment. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

A "special employee" under workers' compensation is one who is transferred for a limited time of whatever duration to the service of another. Union Light & Power Co. v. D.C. Dep't of Empl. Servs., 796 A.2d 665, 2002 D.C. App. LEXIS 85 (2002).

Subsequent injury.

Claimant had one year, following the time she first became aware, or should have become aware, of her new injury, a worsening of her prior symptoms from a work-related back injury, to file a new claim for compensation benefits under Workers' Compensation Act provision regarding a new claim for disability benefits for a new injury that arose from a work-related accident for which a claim had previously been filed, so long as that claim was not barred by res judicata, and she was not limited to filing a claim for modification, which imposed a one-year limitation from either the date of the last payment of compensation or the rejection of a claim. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 981 A.2d 1216, 2009 D.C. App. LEXIS 500 (2009).

A subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable under the Workers' Compensation Act (WCA) if it is the direct and natural result of a compensable primary injury. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

Wages.

Income from business owned by workers' compensation claimant, even though he contributes some work to it, should not be used to reduce disability. D.C. Code 1981, § 36-301(8). Washington Post v. District of Columbia Dep't of Empl. Servs., 675 A.2d 37, 1996 D.C. App. LEXIS 69 (1996).

Profits derived from business generally are not to be considered as earnings and cannot be accepted as measure of loss of earning power unless they are almost entirely the direct result of workers' compensation claimant's personal management and endeavor. D.C. Code 1981,

§ 36-301(8). Washington Post v. District of Columbia Dep't of Empl. Servs., 675 A.2d 37, 1996 D.C. App. LEXIS 69 (1996).

Payments made by employer to taxicab company to provide for workers' compensation claimant's transportation to and from work after injury would not be included in determining postinjury wages, for purposes of determining benefits due, as payments to taxicab company were in nature of reimbursements rather than true economic benefits to claimant. D.C. Code 1981, § 36-301(19). Mason v. District of Columbia Dep't of Employment Services, 562 A.2d 644, 1989 D.C. App. LEXIS 152 (1989).

In computing wages, for workers' compensation purposes, ultimate objective is to ascertain true economic benefit to claimant, with it being generally recognized that not only wages and salary are included in computations, but other things of value received in consideration for work such as commissions. D.C. Code 1981, § 36-301(19). Mason v. District of Columbia Dep't of Employment Services, 562 A.2d 644, 1989 D.C. App. LEXIS 152 (1989).

Weight and sufficiency of evidence.

When a claimant seeks compensation for a psychological injury that allegedly resulted from a work-related accidental physical injury and has the burden to prove by a preponderance of the evidence that the physical accident caused or contributed to the psychological injury, in determining whether a claimant has met his or her burden, a hearing examiner must weigh and consider the evidence as well as make credibility determinations; in this regard, the examiner may consider the reasonableness of the testimony and whether or not particular testimony has been contradicted or corroborated by other evidence. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

Evidence did not support continuation of temporary disability benefits to workers' compensation claimant after treating physician released her for full-time duty without restriction, even though claimant had been terminated from employment and remained unemployed. Georgetown Univ. Hosp. v. D.C. Dep't of Empl. Servs., 929 A.2d 865, 2007 D.C. App. LEXIS 473 (2007).

Evidence supported finding that claimant's disability from lower-back problems was caused by work-related injury that occurred when she was knocked in the forehead by closet door that had fallen off its hinges; although claimant was treated for forehead contusion and neck pain, and did not immediately complain of lower-back injury, there was evidence that lower-back injury resulted from claimant's physical therapy for neck pain. Georgetown Univ. Hosp. v. D.C. Dep't of Empl. Servs., 929 A.2d 865, 2007 D.C. App. LEXIS 473 (2007).

Widows.

In determining whether claimant was dependent upon her husband for support at the time of his death, such that she was "widow" entitled to workers' compensation death benefits, the pertinent question was whether, at that time, husband's contributions were looked to by claimant for maintenance of claimant's accustomed standard of living. Pickrel v. District of Columbia Dep't of Empl. Servs., 760 A.2d 199, 2000 D.C. App. LEXIS 233 (2000).

Claimant was not dependent upon her husband at time of his death and, thus, was not a "widow" entitled to workers' compensation death benefits; in their separation agreement, parties divided their marital property and provided that each party was responsible for his own debts, and there was no reason why claimant who had surrendered all right to look to husband for support while he was living should, upon his death, receive benefits that were intended to replace the support which husband had been providing. Pickrel v. District of Columbia Dep't of Empl. Servs., 760 A.2d 199, 2000 D.C. App. LEXIS 233 (2000).

Where parties enter into separation agreement which erases any claim of existing conjugal nexus, it is irrelevant that workers' compensation claimant was living apart from the decedent for justifiable cause for purposes of statute defining "widow," who is entitled to workers' compensation death benefits, as the decedent's wife living with or dependent for support upon decedent at the time of his death or living apart for justifiable cause. Pickrel v. District of Columbia Dep't of Empl. Servs., 760 A.2d 199, 2000 D.C. App. LEXIS 233 (2000).

Even if conjugal nexus continued to exist for some time after claimant left her husband, the parties' separation agreement extinguished that nexus, and absent any evidence that conjugal nexus was revived subsequent to execution of separation agreement, claimant was not a widow under the justifiable cause prong of statute defining "widow," who is entitled to receive workers' compensation death benefits, as including decedent's wife living with or dependent for support upon decedent at time of his death or living apart for justifiable cause. Pickrel v. District of Columbia Dep't of Empl. Servs., 760 A.2d 199, 2000 D.C. App. LEXIS 233 (2000).

Substantial evidence supported finding of the Department of Employment Services (DOES) that a conjugal nexus existed between claimant and her husband at the time of husband's death, as element in determining whether claimant was a "widow" entitled to workers' compensation death benefits, though the two

were separated, where an intimate relationship was maintained, claimant never lived with another man, claimant held herself out as the decedent's wife, and claimant never filed for divorce. D.C. Code 1981, § 36-301 et seq. Beta Constr. Co. v. District of Columbia Dep't of Empl. Servs., 748 A.2d 427, 2000 D.C. App. LEXIS 81 (2000).

Inquiry into whether a claimant is a "widow" entitled to workers' compensation death benefits is two-pronged; it first must be determined if the claimant and the decedent were living apart for justifiable cause, and it must then be determined if there was a conjugal nexus between them that subsisted at the time of the decedent's death. D.C. Code 1981, § 36-301 et seq. Beta Constr. Co. v. District of Columbia Dep't of Empl. Servs., 748 A.2d 427, 2000 D.C. App. LEXIS 81 (2000).

The conjugal nexus test, as element in determining whether a claimant is a "widow" entitled to workers' compensation death benefits, focuses on the real status of the claimant in respect to the deceased, not the existing legal formalities of the relationship. D.C. Code 1981, § 36-301 et seq. Beta Constr. Co. v. District of Columbia Dep't of Empl. Servs., 748 A.2d 427, 2000 D.C. App. LEXIS 81 (2000).

Substantial evidence supported finding of the Department of Employment Services (DOES) that claimant and her husband were living apart for justifiable cause at the time of husband's death, as element in determining whether claimant was a "widow" entitled to workers' compensation death benefits, where claimant moved into a smaller apartment with her two children when husband failed to provide adequate support, and two attempts at reconciliation failed due to husband's refusal to contribute to the household. D.C. Code 1981, § 36-301 et seq. Beta Constr. Co. v. District of Columbia Dep't of Empl. Servs., 748 A.2d 427, 2000 D.C. App. LEXIS 81 (2000).

§ 32-1502. Administration; annual report to Council.

(a) The Mayor shall administer the provisions of this chapter, and shall make such rules and regulations, appoint and fix the compensation of such personnel, and make such expenditures as may be necessary. All expenditures of the Mayor in the administration of this chapter shall be allowed and paid as provided in § 32-1541 upon the presentation of itemized vouchers therefor approved by the Mayor.

(b) The Mayor shall report annually to the Council by February 1st of each year on the status, from the previous fiscal year, of the workers' compensation program. The report shall include the following:

(1) The total number of cases, the total number of lost time cases, the number of medical only cases, the number of cases where no compensation was paid, the number of cases that are more than 500 weeks, the number of permanent partial disability scheduled cases, the number of permanent partial disability nonscheduled cases, the number of permanent total disability cases, the number of temporary total disability cases, the total number of lost time cases, the number of medical only cases, the number of cases in which claimant was represented by an attorney, cumulative total attorney fees paid, the number of cases controverted, the number of controverted cases decided in favor of employer and decided in favor of claimant, the growth in the assigned risk plan, the number of cases in and the future liability of the special fund; and

(2) The percentage of the total number of cases each year that are: more than 500 weeks; permanent partial disability; permanent partial disability nonscheduled; permanent total disability; and temporary total disability.

(July 1, 1980, D.C. Law 3-77, § 3, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(b), 46 DCR 891.)

Prior Codifications. — 1981 Ed., § 36-302. **Legislative history of Law 3-77.** — For

legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 12-229. — For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

Editor's notes. — Workers' Compensation Equity Amendment Act Rulemaking Approval Resolution of 1995: Pursuant to Proposed Resolution 11-177, deemed approved October 11, 1995, Council approved proposed rules to implement the Workers' Compensation Equity Amendment Act of 1990.

CASE NOTES

ANALYSIS

Construction with other laws.
Jurisdiction.

Construction with other laws.

District of Columbia Workers' Compensation Act did not violate section of District of Columbia Self-Government and Governmental Reorganization Act which prohibits District of Columbia Council from exceeding its present authority over any other Federal agency, even though Council eliminated a function previously performed by Department of Labor with regard to workmen's compensation applicable to the private sector, in that enactment of Workers' Compensation Act neither increased nor decreased District's authority over Department of Labor, but rather it removed one category of cases handled by such agency, and decrease of workload of federal agency charged with local responsibility did not constitute a proscribed exercise of authority over such agency. D.C. Code 1981, §§ 1-233(b), 36-301 et seq. District of Columbia v. Greater Washington Cent. Labor Council, 442 A.2d 110, 1982 D.C. App. LEXIS 288 (1982), writ of certiorari denied by 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487, 1983 U.S. LEXIS 3736, 51 U.S.L.W. 3634 (1983).

Jurisdiction.

For purposes of primary jurisdiction, intentional tort claims under Workers' Compensation Act should be governed by same standards as issue of whether injury occurred in course of employment. D.C. Code 1981, § 36-301 et seq. Grillo v. National Bank of Washington, 540 A.2d 743, 1988 D.C. App. LEXIS 31 (1988).

§ 32-1503. Coverage.

(a) Except as provided in subsections (a-1) through (a-3) of this section, this chapter shall apply to:

(1) The injury or death of an employee that occurs in the District of Columbia if the employee performed work for the employer, at the time of the injury or death, while in the District of Columbia; and

(2) The injury or death of an employee that occurs outside the District of Columbia if, at the time of the injury or death, the employment is localized principally in the District of Columbia.

(a-1) No employee shall receive compensation under this chapter and at any time receive compensation under the workers' compensation law of any other state for the same injury or death.

(a-2) This chapter shall not apply if the employee injured or killed was a casual employee except that for the purposes of this chapter, casual, occasional, or incidental employment outside of the District of Columbia by a District of Columbia employer of an employee regularly employed by the employer within the District of Columbia shall be construed to be employment within the District of Columbia.

(a-3) An employee and his employer who are not residents of the District of Columbia and whose contract of hire is entered into in another state shall be exempted from the provisions of this chapter while such employee is temporarily or intermittently within the District of Columbia doing work for such nonresident employer, if such employer has furnished workers' compensation

insurance coverage under the workers' compensation or similar laws of such other state, so as to cover such employee's employment while in the District of Columbia. The benefits under this chapter or similar laws of such other state shall be the exclusive remedy against such employer for any injury, whether resulting in death or not, received by such employee while working for such employer in the District of Columbia.

(b) Every employer subject to this chapter shall be liable for compensation for injury or death without regard to fault as a cause of the injury or death.

(c) In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payment.

(d) Liability for compensation shall not apply where injury to the employee was occasioned solely by his intoxication or by his willful intention to injure or kill himself or another.

(e) The requirements of this chapter shall apply with regard to the nonprisoners employed in a prison industries program operating on the grounds of a District correctional facility, whether within the District or elsewhere, and maintained in accordance with the Prison Industries Act of 1996. The requirements of this chapter also shall apply with regard to prisoners employed in a prison industry approved under the Bureau of Justice Assistance Private Sector Prison Industry Enhancement Certification Program as defined in § 24-231.01(1).

(July 1, 1980, D.C. Law 3-77, § 4, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(b), 37 DCR 6890; May 8, 1996, D.C. Law 11-117, § 18(b), 43 DCR 1179.)

Section references. — This section is referred to in § 32-1504.

Prior Codifications. — 1981 Ed., § 36-303.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 8-198. — For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 32-1542.01.

Legislative history of Law 11-117. — Law 11-117, the "Prison Industries Act of 1996," was introduced in Council and assigned Bill No. 11-151, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1996, and February 6, 1996, respectively. Signed by the Mayor on February 26, 1996, it was assigned Act No. 11-221 and transmitted to both Houses of Congress for its review. D.C. Law became effective on May 8, 1996.

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 32-1501.

CASE NOTES

ANALYSIS

Administrative procedure.
Employment and injury both outside of jurisdiction.
Employment localized principally in District.
Employment relationship.
Full faith and credit.
In general.
Injury outside of District.
Injury within and employment outside of District.
Judicial review.
Receiving worker's compensation from another jurisdiction.
Remand.
Subcontractors.
Subsidiaries.

Administrative procedure.

Compensation Review Board's jurisdictional decision that led to the denial of benefits for workers' compensation claimant, which rested on its finding that claimant's carpal tunnel injury occurred outside of the District of Columbia because on the date the injury manifested

itself, his employment was not in the District, was not arbitrary, capricious, an abuse of discretion, unreasonable, or plainly erroneous; the Board's finding rested on the Workers' Compensation Act's (WCA) current two-tiered jurisdictional, or "coverage," scheme. Smith v. D.C. Dep't of Empl. Servs., 934 A.2d 428, 2007 D.C. App. LEXIS 642 (2007).

Director of Department of Employment Services (DOES) provided sufficiently reasoned analysis indicating that prior policies and standards were being deliberately changed, not casually ignored, when it ruled that amended statute, prohibiting employee from receiving benefits if employee had received compensation under workers' compensation law of any other state, did not have notice requirement; Director stated that amendment to statute overruled its prior decision in Russell which held that statute, prior to its amendment, contained notice requirement. D.C. Code 1981, § 36-303(a-1). Springer v. District of Columbia Dep't of Empl. Servs., 743 A.2d 1213, 1999 D.C. App. LEXIS 300 (1999).

Hearing examiner was required to make findings as to the time (and, consequently, the place) and manner of the injury for purposes of determining whether claimant's injury was within coverage of the Workers' Compensation Act. D.C. Code 1981, § 36-303. King v. District of Columbia Dep't of Empl. Servs., 742 A.2d 460, 1999 D.C. App. LEXIS 285 (1999).

When injury occurs during performance of employee's duties, substantial question will exist as to whether Workers' Compensation Act applies, and thus agency will have primary jurisdiction, unless injuries were clearly not compensable under statute. D.C. Code 1981, §§ 36-303, 36-304(a). Estate of Underwood v. National Credit Union Admin., 665 A.2d 621, 1995 D.C. App. LEXIS 168 (1995).

Director of Department of Employment Services could not apply new construction of District of Columbia Workers' Compensation Act provision concerning recovery of supplemental benefits retroactively to cases filed after previous agency adjudication which case overruled; cases were invariably at odds, claimant had no notice or intimation of overruling until long after he reasonably elected to file in another jurisdiction, real party in interest that encouraged new rule was institutional litigant with numerous cases before Department, and agency could not demonstrate that prospective application would impose severe administrative burden or otherwise interfere with significant statutory interests. D.C. Code 1981, § 36-303(a)(1). Reichley v. District of Columbia Dep't of Employment Services, 531 A.2d 244, 1987 D.C. App. LEXIS 428 (1987).

Definition of employment "principally localized" in the District adopted by the Director of the Department of Employment Services for determining whether injured employee is entitled to workers' compensation is a reasonable one, given plain language of the Workers' Compensation Act [D.C. Code 1981, § 36-303(a)]. Hughes v. District of Columbia Dep't of Employment Services, 498 A.2d 567, 1985 D.C. App. LEXIS 504 (1985).

Employment and injury both outside of jurisdiction.

Employee's one employment-related contact with District of Columbia on business for employer was insufficient to bring employment as mechanic for employer within District of Columbia Workmen's Compensation Act. D.C. Code 1973, § 36-501 (now D.C. Code 1981, § 36-303); Longshoremen's and Harbor Workers' Compensation Act, §§ 1-51, 33 U.S.C. §§ 901-950. Pfister v. Director, Office of Workers' Compensation Programs, etc., 675 F.2d 1314, 1982 U.S. App. LEXIS 19868 (C.A.D.C. 1982).

Employer's presence in District of Columbia by virtue of ticket offices it operated or shared in operation of was unconnected with employee's employment as mechanic at Virginia airport and therefore incapable of supporting jurisdiction under District of Columbia Workmen's Compensation Act. D.C. Code 1973, § 36-501 (now D.C. Code 1981, § 36-303); Longshoremen's and Harbor Workers' Compensation Act, §§ 1-51, 33 U.S.C. §§ 901-950. Pfister v. Director, Office of Workers' Compensation Programs, etc., 675 F.2d 1314, 1982 U.S. App. LEXIS 19868 (C.A.D.C. 1982).

Employment localized principally in District.

The "place where the industry is localized" is well-recognized contact that supports assertion of jurisdiction over workmen's compensation claims. D.C. Code § 36-501; Longshoremen's and Harbor Workers' Compensation Act, § 20(a) as amended 33 U.S.C. § 920(a). Director, Office of Workers' Compensation Programs, etc. v. National Van Lines, Inc., 613 F.2d 972, 1979 U.S. App. LEXIS 10555 (C.A.D.C. 1979), writ of certiorari denied by 448 U.S. 907, 100 S. Ct. 3049, 65 L. Ed. 2d 1136, 1980 U.S. LEXIS 2467, 104 L.R.R.M. (BNA) 2688 (1980).

Professional hockey player's employment with National Hockey League (NHL) team that played its home games in the District of Columbia was localized principally in District of Columbia for workers' compensation purposes, though player was injured while playing game for team's minor league affiliate, which played its home games in Maine; principal duty for which player was hired was to play in regularly scheduled NHL games, and though player actually spent more time in Maine than in the District of Columbia, his activities with minor league affiliate were ancillary to preparing for

NHL games, in that, when player was playing for minor league affiliate, the NHL team maintained complete control over his activities, his paycheck came directly from NHL team, and he could be called up to NHL team at any time. Lincoln Hockey, LLC v. D.C. Dep't of Empl. Servs., 997 A.2d 713, 2010 D.C. App. LEXIS 350 (2010).

A requirement that the contacts must be substantially more in the District of Columbia than in all other places combined is not supported by the language or purpose of the workers' compensation statute, providing compensation to a claimant whose work-related injury occurs outside of the District, if at the time of the injury, the employment is "localized principally" in the District. Shipkey v. D.C. Dep't of Empl. Servs., 955 A.2d 718, 2008 D.C. App. LEXIS 382 (2008).

It was unreasonable for administrative law judge (ALJ) to conclude that, because employee, who was injured outside of the District of Columbia, worked a "plurality" of hours as opposed to a "majority" of the hours in the District versus the combined hours in other states, his employment was not "localized principally" in the District within meaning of workers' compensation statute, which provides compensation to a claimant whose work-related injury occurs outside of the District, if at the time of the injury, the employment is "localized principally" in the District. Shipkey v. D.C. Dep't of Empl. Servs., 955 A.2d 718, 2008 D.C. App. LEXIS 382 (2008).

Each prong of Hughes test for determining whether employment of workers' compensation claimant, who was injured outside the District of Columbia, is "localized principally" in the District, such that he is entitled to compensation, is concerned either with a distinct location and/or a distinct type of service to be performed at that location, and the test cannot be read in such a manner as to conflate the inquiry required at each prong; first prong evaluates amount of time the employee spends performing principal services for which he was hired without regard to any ancillary preparatory time in employer's facilities, and in event that employee's "place of performance" is not in employer's facilities, the second prong evaluates amount of time employee spends doing so, again without regard for any ancillary preparatory time. Shipkey v. D.C. Dep't of Empl. Servs., 955 A.2d 718, 2008 D.C. App. LEXIS 382 (2008).

The three prongs of the Hughes test for determining whether employment of workers' compensation claimant, who was injured outside the District of Columbia, is "localized principally" in the District, such that he is entitled to compensation, are set out in a disjunctive ("or"), not conjunctive ("and"), manner, and this means that resolution of a claim under the first prong precludes consideration of the subsequent prongs, and resolution under the second prong precludes consideration of the third prong, such that the third prong is reached only if the first two prongs are not conclusive. Shipkey v. D.C. Dep't of Empl. Servs., 955 A.2d 718, 2008 D.C. App. LEXIS 382 (2008).

Only in the event that there is no client or employer site where the employee performs the principal service for which he was hired, should the third prong of Hughes, which focuses on the base of operations, be used when determining whether employment of workers' compensation claimant, who was injured outside the District of Columbia, is "localized principally" in the District, such that he is entitled to compensation. Shipkey v. D.C. Dep't of Empl. Servs., 955 A.2d 718, 2008 D.C. App. LEXIS 382 (2008).

The pertinent inquiry for determining where the "place of employment" is under the first prong of the Hughes test, for determining where employment is "localized principally" for workers' compensation claimant whose work-related injury occurs outside of the District of Columbia, is where the employee performs the principal services which he was hired to do; any preparation for those services is ancillary. Shipkey v. D.C. Dep't of Empl. Servs., 955 A.2d 718, 2008 D.C. App. LEXIS 382 (2008).

Workers' Compensation Act provides compensation to a claimant whose work-related injury occurs outside of the District of Columbia, if at time of injury, the employment is "localized principally" in District, and three-pronged test under Hughes determines where employment is "localized principally" based upon: (1) places of employer's business office or facility at which or from which employee performs principal services for which he was hired; or (2) if there is no such office or facility at which employee works, the employee's residence, the place where the contract is made and the place of performance; or (3) if neither (1) nor (2) is applicable, the employee's base of operations. Shipkey v. D.C. Dep't of Empl. Servs., 955 A.2d 718, 2008 D.C. App. LEXIS 382 (2008).

Professional football players who played games for Washington Redskins in the District of Columbia were employed in the District for workers' compensation purposes, although players' practices were held in Virginia. D.C. Code 1981,§ 36-303(a). Pro-Football, Inc. v. District of Columbia Dep't of Employment Services, 588 A.2d 275, 1991 D.C. App. LEXIS 68 (1991).

Statutory coverage requirement, that employment be principally localized in District of Columbia, required showing that claimant's employment relationship with District have contacts more substantial there than in any other place. D.C. Code 1981, § 36-303(a). Petrilli v. District of Columbia Dep't of Employ-

ment Services, 509 A.2d 629, 1986 D.C. App. LEXIS 332 (1986).

Department of Employment Services did not err in determining that injured employee did not qualify for District workers' compensation under the Director's construction of statutory requirement for coverage that employment be "principally localized" in the District [D.C. Code 1981, § 36-303(a)], where employee had been assigned primarily to work at sites out of the District and worked approximately 60 to 70% of his time out of the District, even though he reported to work and checked out in the District and employee testified the paper work which he did in the District was a more integral and significant portion of his job than was his field work. Hughes v. District of Columbia Dep't of Employment Services, 498 A.2d 567, 1985 D.C. App. LEXIS 504 (1985).

Employment relationship.

Evidence supported conclusion that an employer/employee relationship existed between sole proprietor and workers' compensation claimant, who was sole proprietor's brother-in-law, as necessary for claimant to be eligible for benefits; claimant's lack of specialized skill or professional service that he was providing and, that his work was unskilled made it more likely that claimant was sole proprietor's employee, 26-month period of claimant's employment spanned nearly the entirety of sole proprietor's existence, and pushed the nature of claimant's relationship with sole proprietor beyond "casual" to reflect more of an employer/employee relationship, and even if claimant's work was intermittent, this did not preclude the existence of an employer/employee relationship. Reyes v. D.C. Dep't of Empl. Servs., 48 A.3d 159, 2012 D.C. App. LEXIS 317 (2012).

Full faith and credit.

Reach of District of Columbia Workmen's Compensation Act is limited in accordance with dictates of full faith and credit clause of the United States Constitution to cases where there is some substantial connection between the District and particular employee-employer relationship. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-51 as amended 33 U.S.C. §§ 901-950; U.S. Const. art. 4, § 1. Director, Office of Workers' Compensation Programs, etc. v. National Van Lines, Inc., 613 F.2d 972, 1979 U.S. App. LEXIS 10555 (C.A.D.C. 1979), writ of certiorari denied by 448 U.S. 907, 100 S. Ct. 3049, 65 L. Ed. 2d 1136, 1980 U.S. LEXIS 2467, 104 L.R.R.M. (BNA) 2688 (1980).

Claimant was not barred from receiving benefits under District's Workers' Compensation Act, though she had cashed two checks issued to her under Maryland law, where checks did not indicate claim was being processed under Maryland law, employer never told her the claim was being processed under Maryland law, she was not given copies of any documents or reports employer filed with Maryland by employer as required by Maryland law, claimant never filed a claim in Maryland, and Maryland law prohibited the payment of compensation before a claim had been filed. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 825 A.2d 292, 2003 D.C. App. LEXIS 293 (2003).

In general.

Fact that deceased worker's children resided in District of Columbia did not allow children to recover death benefits under Longshoremen's and Harbor Workers' Compensation Act as made applicable to District of Columbia where employment relationship bore no connection to District. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-51, 33 U.S.C. §§ 901-950; D.C. Code 1973, § 36-501. Butler v. Continental Western Lines, etc., 668 F.2d 1374, 1981 U.S. App. LEXIS 15853 (C.A.D.C. 1981).

District of Columbia Workmen's Compensation Act is of widest permissible extraterritorial application. D.C. Code § 36-501; Longshoremen's and Harbor Workers' Compensation Act, §§ 1-51 as amended 33 U.S.C. §§ 901-950; U.S. Const. art. 4, § 1. Director, Office of Workers' Compensation Programs, etc. v. National Van Lines, Inc., 613 F.2d 972, 1979 U.S. App. LEXIS 10555 (C.A.D.C. 1979), writ of certiorari denied by 448 U.S. 907, 100 S. Ct. 3049, 65 L. Ed. 2d 1136, 1980 U.S. LEXIS 2467, 104 L.R.R.M. (BNA) 2688 (1980).

In workmen's compensation case, contacts with jurisdiction are evaluated for jurisdictional purposes as of time of injury. D.C. Code § 36-501; Longshoremen's and Harbor Workers' Compensation Act, § 20(a) as amended 33 U.S.C. § 920(a). Director, Office of Workers' Compensation Programs, etc. v. National Van Lines, Inc., 613 F.2d 972, 1979 U.S. App. LEXIS 10555 (C.A.D.C. 1979), writ of certiorari denied by 448 U.S. 907, 100 S. Ct. 3049, 65 L. Ed. 2d 1136, 1980 U.S. LEXIS 2467, 104 L.R.R.M. (BNA) 2688 (1980).

Statutory exemption from workers' compensation coverage for employee and employer, who are not residents of District of Columbia (DOC) and whose employment contract was entered into in another state, while employee is temporarily or intermittently working in DOC applies even if employee has not received and is not entitled to receive benefits under other state's workers' compensation scheme for work related injury suffered in DOC. Adjei v. D.C. Dep't of Empl. Servs., 817 A.2d 179, 2003 D.C. App. LEXIS 79 (2003).

Workers' Compensation Act contains presumption of compensability, designed to effect humanitarian purposes of Act. D.C. Code 1981,

§ 36-301 et seq. Harris v. District of Columbia Office of Worker's Compensation, 660 A.2d 404, 1995 D.C. App. LEXIS 135 (1995).

In determining whether employee was covered under workers' compensation statute limiting coverage to employees whose employment is principally localized in District of Columbia, analysis was properly limited to employment at time of injury where employee had previously worked for employer in different capacities during which her employment relationship with employer changed as did nature and amount of her work activity in District. Petrilli v. District of Columbia Dep't of Employment Services, 509 A.2d 629, 1986 D.C. App. LEXIS 332 (1986).

Injury outside of District.

In proceeding under District of Columbia Workmen's Compensation Act for death of employee resulting from injuries received while driving automobile homeward after terminating day's work outside District, where both employee and claimant were residents of District and employee had been hired in District by District of Columbia employer and had worked on various projects in and around District, statutory provisions and evidence sustained Deputy Commissioner's conclusion that he had jurisdiction of proceeding. Longshoremen's and Harbor Workers' Compensation Act § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note. Cardillo v. Liberty Mut. Ins. Co., 67 S.Ct. 801, 1947 U.S. LEXIS 2874 (U.S.Dist.Col. 1947).

The legitimate interest of District of Columbia in providing adequate workmen's compensation measures for its residents depends on some substantial connection between the District and the particular employee-employer relationship, and it does not vary with amount or percentage of work performed within the District nor turn on the fortuitous circumstance of place of work or injury. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note. Cardillo v. Liberty Mut. Ins. Co., 67 S.Ct. 801, 1947 U.S. LEXIS 2874 (U.S.Dist.Col. 1947).

Under District of Columbia Workmen's Compensation Act, Deputy Commissioner had jurisdiction to entertain a claim by widow of an employee who had been a resident of District, who had been employed by a District employer, and who had been subject to work assignments in the District, although employee was assigned to work outside District at time fatal injury was received. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note. Cardillo v. Liberty Mut. Ins. Co., 67 S.Ct. 801, 1947 U.S. LEXIS 2874 (U.S.Dist.Col. 1947).

There was sufficient "substantial connection" between District of Columbia and employment relationship to bring relationship within coverage of District of Columbia Workmen's Compensation Act, even though claimant's place of employment at time of injury was outside District and claimant's injury occurred outside District; claimant was hired by nonresident employer in District and worked there for several years, claimant was shop steward for D.C. local of union, and made number of trips to or through District during employment in Virginia. D.C. Code 1973, § 36-501. Greenfield v. Volpe Constr. Co., 849 F.2d 635, 1988 U.S. App. LEXIS 7864 (C.A.D.C. 1988).

Employment relationship that Saudi Arabian enterprise formed with employee was sufficiently affiliated with District of Columbia to justify application of its then-applicable Workmen's Compensation Act; former law contained built-in presumption of jurisdiction of widest permissible extraterritorial application, Saudi Arabian enterprise maintained District of Columbia office to recruit metropolitan Washington area workers and continuously develop United States supply sources for projects abroad, sole United States office of Saudi Arabia enterprise was maintained in the District of Columbia, and permitting workers' compensation recovery would not be offensive to law of Virginia, where employment contract was executed and employee's family resided, although Virginia law did not provide for recovery. Longshore and Harbor Workers' Compensation Act, §§ 1-51, 33 U.S.C. §§ 901-905; D.C. Code 1981, §§ 36-501, 36-502. Gustafson v. International Progress Enterprises, 832 F.2d 637, 1987 U.S. App. LEXIS 14926 (C.A.D.C. 1987).

Employment relationship that Saudi Arabian enterprise formed with employee was legitimately and substantially tied to United States and the District of Columbia such that former Workmen's Compensation Act of the District could be constitutionally applied; Saudi Arabian enterprise deliberately set up shop in District of Columbia to recruit metropolitan Washington area workers and continuously develop United States supply sources for projects abroad. Longshore and Harbor Workers' Compensation Act, §§ 1-51, 33 U.S.C. §§ 901-950; D.C. Code 1981, §§ 36-501, 36-502. Gustafson v. International Progress Enterprises, 832 F.2d 637, 1987 U.S. App. LEXIS 14926 (C.A.D.C. 1987).

Where worker's residence and employer's headquarters were located in metropolitan area in District of Columbia and parts of Virginia and Maryland, and even employer's "local" haulage involved three jurisdictions, contacts with the District of Columbia were sufficiently substantial that court, faced with presumption of jurisdiction and with determination by Benefits Review Board that injury

was covered by District of Columbia Act, was required to conclude that District of Columbia Workmen's Compensation Act applied, though worker suffered his injury in New York while under direction of dispatcher in Illinois. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-51, 18(b), 19(d), 21, 21(b)(1, 3), (c), 44, 45 as amended 33 U.S.C. §§ 901-950, 918(b), 919(d), 921, 921(b)(1, 3), (c), 944, 945; 18 U.S.C. §§ 1291, 1292; D.C. Code §§ 36-501 et seq. 36-502; Code Va.1950, §§ 65.1-1 to 65.1-152. Director, Office of Workers' Compensation Programs, etc. v. National Van Lines, Inc., 613 F.2d 972, 1979 U.S. App. LEXIS 10555 (C.A.D.C. 1979), writ of certiorari denied by 448 U.S. 907, 100 S. Ct. 3049, 65 L. Ed. 2d 1136, 1980 U.S. LEXIS 2467, 104 L.R.R.M. (BNA) 2688 (1980).

Maryland Workmen's Compensation Act, relieving principal contractor of common law liability to employees of his subcontractors if he has workmen's compensation insurance for their benefit, would be a bar to District of Columbia tort action brought against principal contractor by electrician employed in District of Columbia by subcontractor but injured while working on principal employer's project in Maryland. Code Md.1951, art. 101, § 63; Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 4(a), 33 U.S.C. §§ 901 et seq., 904(a); D.C. Code 1951, § 36-501, 33 U.S.C. § 901 note. Jonathan Woodner Co. v. Mather, 210 F.2d 868, 1954 U.S. App. LEXIS 4132 (C.A.D.C. 1954).

As used in Maryland Workmen's Compensation Act, making "benefits under the Workmen's Compensation Act" of another state exclusive remedy against employer for injury sustained by employee while working for such employer in Maryland quoted phrase cannot sensibly be interpreted to include a common law action; and therefore, notwithstanding such provision, if subcontractor's employee, possessing common law cause against principal employer under District of Columbia law, had made claim in Maryland, for injuries sustained while working in that state, against principal contractor, Maryland Act would govern. Longshoremen's and Harbor Workers' Compensation Act, § 33, 33 U.S.C. § 933. Jonathan Woodner Co. v. Mather, 210 F.2d 868, 1954 U.S. App. LEXIS 4132 (C.A.D.C. 1954).

Where employer, with main office in New York, maintained office and store yard in District of Columbia, workman's contract of employment was made in the District, employer was engaged in construction work under three contracts, two located in District and one in Virginia, and injured workman's contract of employment was made in the District but he was transferred from one job to another, injury sustained in Virginia was to an employee of an employer carrying on employment in the District so that the District Workmen's Compensation Law was applicable even though the work was being performed on a federal job on land owned by the United States. 40 U.S.C. § 290. Travelers Ins. Co. v. Cardillo, 141 F.2d 364, 1944 U.S. App. LEXIS 4352 (1944).

Even though the Longshoremen's Act was adopted as the Compensation Law of the District of Columbia, section of the Longshoremen's Act, excluding jurisdiction of injuries compensable under state law, has no place in the District act which expressly extends its provisions to cases of injury or death, irrespective of the place where either occurred. Longshoremen's and Harbor Workers' Compensation Act, § 3(a), 33 U.S.C. § 903(a). Travelers Ins. Co. v. Cardillo, 141 F.2d 364, 1944 U.S. App. LEXIS 4352 (1944).

Where resident of District of Columbia was employed by construction company which had its principal office in the District and at time of injury and prior thereto was engaged in construction work in the District and in immediate vicinity, the employer was carrying on employment in the District and the Workmen's Compensation Act of the District was applicable even though work being done at time of injury was on a federal job on property owned by the United States in Maryland. D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note; Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; 40 U.S.C. § 290. Travelers Ins. Co. v. Cardillo, 141 F.2d 364, 1944 U.S. App. LEXIS 4352 (1944).

Even though the Longshoremen's Act was adopted as the Compensation Law of the District of Columbia, section of the Longshoremen's Act, excluding jurisdiction of injuries compensable under state law, has no place in the District act which expressly extends its provisions to cases of injury or death, irrespective of the place where either occurred. D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note; Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 3(a), 33 U.S.C. §§ 901 et seq., 903(a). Travelers Ins. Co. v. Cardillo, 141 F.2d 364, 1944 U.S. App. LEXIS 4352 (1944).

Whether employer was at time of injury engaged in business in District of Columbia and whether deceased was an employee within District in carrying on of the business, and when injured was performing services in connection with the employment, were important considerations in determining whether the compensation law of the District was applicable. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; D.C. Code 1940, §§ 36-501, 36-502, 33 U.S.C. § 901 note. B.F. Goodrich Co. v. Britton, 139 F.2d 362, 1943 U.S. App. LEXIS 4055 (1943).

Where salesman's office was in District of Columbia, though his selling contacts were

largely outside and his time was nearly equally divided between the two, and he was fatally injured while traveling in Pennsylvania in connection with his employment, the Workmen's Compensation Act of the District of Columbia was applicable. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; D.C. Code 1940, §§ 36-501, 36-502, 33 U.S.C. § 901 note. B.F. Goodrich Co. v. Britton, 139 F.2d 362, 1943 U.S. App. LEXIS 4055 (1943).

As respects liability of employer carrying on any employment in the District of Columbia to injured employee under District of Columbia Employees' Compensation Act, it was immaterial that injury occurred in Maryland. Longshoremen's and Harbor Workers' Compensation Act, D.C. Code 1929, T. 19, § 11, 33 U.S.C. § 901 note. Moyer v. Cardillo, 119 F.2d 785, 1941 U.S. App. LEXIS 4661 (1941).

Where employer, licensed in the District of Columbia as a coal dealer and making deliveries in the District as well as in Maryland upon being served in November with notice to vacate premises in Washington from which business was conducted, moved trucks to Maryland for storage but continued to take orders and make sales at Washington office until premises were surrendered to owner on January 17, the employer was "carrying on an employment" in the District of Columbia within the meaning of employees' compensation act on January 10 when employee was injured, and hence employee was entitled to compensation, notwithstanding injury occurred in Maryland. Longshoremen's and Harbor Workers' Compensation Act, D.C. Code 1929, T. 19, § 11, 33 U.S.C. § 901 note. Moyer v. Cardillo, 119 F.2d 785, 1941 U.S. App. LEXIS 4661 (1941).

In determining whether employer's wholly owned subsidiary was liable in negligence to employee injured in collision while driving subsidiary's truck, law of Maryland, employee's state of employment, was applicable as compensation had been awarded there, despite fact that injury took place in District of Columbia. Thomas v. Hycon, Inc., 244 F. Supp. 151, 1965 U.S. Dist. LEXIS 8994 (D.D.C1965).

Employment-related injuries occurring outside the District of Columbia are compensable under the District's Workers' Compensation Act (WCA) only if, at the time of the injury, the employment is localized principally in the District; thus, fixing the time, and therefore the place, of injury is a "necessary" step in determining whether the WCA grants jurisdiction over the matter. Smith v. D.C. Dep't of Empl. Servs., 934 A.2d 428, 2007 D.C. App. LEXIS 642 (2007).

Workers' compensation claimant's employment was not principally localized in the District of Columbia, and thus, the District of Columbia Department of Employment Services (DOES) lacked subject matter jurisdiction over his claim; claimant was injured while working in the Republic of Georgia, employer's business was internationally oriented and apparently geared toward staffing projects in other parts of the world, claimant's employment had substantially more ties to the Republic of Georgia than the District, he performed the principal service for which he was hired in the Republic of Georgia, and his base of operations was Tblisi, the Republic of Georgia, and his personal ties during his employment were more significant in Virginia where he and his wife maintained their home, and later, in California where he resided with his son. Furtick v. D.C. Dep't of Empl. Servs., 921 A.2d 787, 2007 D.C. App. LEXIS 222 (2007).

Injury within and employment outside of District.

Substantial evidence supported finding that employee was employed in District of Columbia (DOC) only "intermittently," within meaning of statutory exemption from workers' compensation coverage for employee and employer who are not residents of DOC and whose employment contract was entered into in another state; employee's daily delivery run records for two weeks prior to his injury showed that 13 out of 230 deliveries were in DOC. Adjei v. D.C. Dep't of Empl. Servs., 817 A.2d 179, 2003 D.C. App. LEXIS 79 (2003).

District of Columbia had adequate connection with claim for workers' compensation benefits to have jurisdiction over it, even though locus of employment had shifted to Northern Virginia at time later injury, as events which involved previous injuries and deterioration of claimant's back occurred within District. D.C. Code 1981, § 36-303(a)(1). Brown v. District of Columbia Dep't of Empl. Servs., 700 A.2d 787, 1997 D.C. App. LEXIS 229 (1997).

District of Columbia, rather than Virginia, workers' compensation law would apply to determine whether exclusive remedy barred claim of injured worker against general contractor and subcontractor; worker and employers were Virginia residents, but accident occurred in the District of Columbia. D.C. Code 1981, § 36-304. Dominion Caisson Corp. v. Clark, 614 A.2d 529, 1992 D.C. App. LEXIS 265 (1992).

Claimant's employment was not principally localized in District of Columbia, for purposes of receiving workers' compensation, though injury occurred in District of Columbia, where claimant was Maryland resident working for Maryland employer whose contract for hire was entered into outside District of Columbia and whose current occupation as driver kept her in Maryland for 101 out of 109 days she held position. D.C. Code 1981, § 36-303(a). Petrilli v. District of Columbia Dep't of Employment Ser-

vices, 509 A.2d 629, 1986 D.C. App. LEXIS 332 (1986).

Statute providing coverage for employees, wherever injured, if at time of injury employment was principally located in District of Columbia did not extend coverage to employee injured within district if that was not where her employment was principally localized. D.C. Code 1981, § 36-303(a). Petrilli v. District of Columbia Dep't of Employment Services, 509 A.2d 629, 1986 D.C. App. LEXIS 332 (1986).

Judicial review.

Compensation Review Board (CRB) and administrative law judge (ALJ) erred by resolving workers' compensation claim of employee, whose work-related injury occurred outside of District of Columbia, based upon employee's preparation time in Maryland, instead of his performance time as plumber, the job for which he was hired, in various jurisdictions, of which principal number of hours were worked in District; this was not in accordance with the law because stated preference under three prong test in Hughes, for determining whether employment was "localized principally" in District, such that employee was entitled to compensation, was to place greater weight on place of employee's performance over any other factor. Shipkey v. D.C. Dep't of Empl. Servs., 955 A.2d 718, 2008 D.C. App. LEXIS 382 (2008).

Court of Appeals would defer to reasonable interpretation by Director of Department of Employment Services of statutory exemption from workers' compensation coverage for employee and employer, who were not residents of District of Columbia (DOC) and whose employment contract was entered into in another state, while employee was temporarily or intermittently working in DOC, as referring to duration and frequency of employee's actual physical presence in DOC, rather than virtual presence of claimant, a nonresident professional wrestler who was injured in match in DOC, through weekly television broadcasts of his wrestling bouts and daily sales of his action figure dolls and other personal memorabilia. Hart v. D.C. Dep't of Empl. Servs., 843 A.2d 746, 2004 D.C. App. LEXIS 59 (2004).

Court of Appeals must sustain agency's interpretation of workers' compensation statute even if another construction may be just as reasonable as agency's, and even if Court might have reached different conclusion had initial decision been its to make. D.C. Code 1981, §§ 1-1509(e), 36-303(a). Pro-Football, Inc. v. District of Columbia Dep't of Employment Services, 588 A.2d 275, 1991 D.C. App. LEXIS 68 (1991).

Agency's interpretation of workers' compensation statute is binding unless it is plainly erroneous or inconsistent with language or purposes of statute. D.C. Code 1981, § 36-303(a). Pro-Football, Inc. v. District of Columbia Dep't of Employment Services, 588 A.2d 275, 1991 D.C. App. LEXIS 68 (1991).

Construction of statute on supplemental workers' compensation benefits by Department of Employment Services was entitled to judicial deference because it was one basic to agency's function of awarding compensation. D.C. Code 1981,§§ 1-1510(a)(3), 36-303(a)(1). Lee v. District of Columbia Dep't of Employment Services, 509 A.2d 100, 1986 D.C. App. LEXIS 327 (1986).

Receiving worker's compensation from another jurisdiction.

It is not unreasonable to consider the workers' compensation insurance coverage provided under another jurisdiction's workers' compensation law to constitute compensation to which the employee is entitled "under this chapter" within meaning of exclusivity provision of District of Columbia Workers' Compensation Act stating that compensation to which an employee is entitled "under this chapter" shall constitute the employee's exclusive remedy against the employer. McGregor v. Grimes, 884 A.2d 605, 2005 D.C. App. LEXIS 505 (2005).

Claimant was not barred from receiving benefits under District's Workers' Compensation Act, though she had cashed two checks issued to her under Maryland law, where checks did not indicate claim was being processed under Maryland law, employer never told her the claim was being processed under Maryland law, she was not given copies of any documents or reports employer filed with Maryland by employer as required by Maryland law, claimant never filed a claim in Maryland, and Maryland law prohibited the payment of compensation before a claim had been filed. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 825 A.2d 292, 2003 D.C. App. LEXIS 293 (2003).

Res judicata did not preclude employer from seeking modification of original order awarding claimant workers' compensation benefits, where employer brought fact that claimant had received compensation payments for same injury under the law of another state to Department of Employment Services' (DOES) attention approximately two months after the order, and hearing examiner confirmed their existence; statute governing modification of awards if there was reason to believe that a change of conditions had occurred which raised issues concerning fact of eligibility created an exception to doctrine of res judicata, and claimant's disqualification for benefits due to double compensation should have been "manifest" at the original hearing. Mendez v. D.C. Dep't of Empl. Servs., 819 A.2d 959, 2003 D.C. App. LEXIS 145 (2003).

Claimant received benefits under New Jersey's workers' compensation law for purposes of statute prohibiting employee from receiving benefits under District of Columbia's Workers' Compensation Act if employee received compensation under workers' compensation law of any other state; claimant acknowledged that he received and accepted benefits that employer voluntarily made, and when such voluntary payments were made, they constituted payment of compensation under New Jersey law. N.J.S.A. 34:15-16; D.C. Code 1981, § 36-303(a-1). Springer v. District of Columbia Dep't of Empl. Servs., 743 A.2d 1213, 1999 D.C. App. LEXIS 300 (1999).

Department of Employment Services (DOES) Director's construction of workers' compensation statute, prohibiting employee from receiving benefits if he received compensation under workers' compensation law of any other state for the same injury, as not including notice requirement was reasonable; there was no notice requirement in the language of the statute itself, and inclusion of notice requirements in other parts of Workers' Compensation Act suggested that the lack of such requirement in statute was not accidental. D.C. Code 1981,§ 36-303(a-1). Springer v. District of Columbia Dep't of Empl. Servs., 743 A.2d 1213, 1999 D.C. App. LEXIS 300 (1999).

It was reasonable and permissible for Director of District of Columbia Department of Employment Services to conclude that District of Columbia Workers' Compensation Act barred supplemental compensation for any period for which employee received benefits under law of another jurisdiction for same injury. D.C. Code 1981, § 36-303(a)(1). Reichley v. District of Columbia Dep't of Employment Services, 531 A.2d 244, 1987 D.C. App. LEXIS 428 (1987).

Interpretation of statute prohibiting receipt of workers' compensation benefits "at the same time" one is collecting payments under law of another state for same injury as prohibiting receipt of benefits for period during which claimant received benefits in another state was reasonable in light of remedial nature of statute and stated objective of bringing costs and benefits in line with those of neighboring jurisdictions, thus precluding claimant's receipt of benefits for period for which Maryland had already paid benefits. D.C. Code 1981, § 36-303(a)(1). Lee v. District of Columbia Dep't of Employment Services, 509 A.2d 100, 1986 D.C. App. LEXIS 327 (1986).

Remand.

Remand was required to determine whether professional football players who were employed by the Washington Redskins but who never performed in the District of Columbia were covered by District of Columbia workers' compensation statute. D.C. Code 1981, § 36-303(a). Pro-Football, Inc. v. District of Columbia Dep't of Employment Services, 588 A.2d 275, 1991 D.C. App. LEXIS 68 (1991).

Subcontractors.

Worker killed in workplace fall was sole employee of subcontractor, not borrowed or joint employee of general contractor, and thus subcontractor was solely liable for paying workers' compensation death benefits, although worker volunteered to help general contractor for 10 minutes after finishing shift with subcontractor, where worker was not paid for this help, and showed no intent to enter employment relationship with general contractor. Union Light & Power Co. v. D.C. Dep't of Empl. Servs., 796 A.2d 665, 2002 D.C. App. LEXIS 85 (2002).

Under the District of Columbia Workers' Compensation Act of 1979 a general contractor is not immune from suit by an injured employee of its subcontractor unless the general contractor secures the payment of statutory compensation to the injured employee after the subcontractor fails to secure such compensation. Hobbs v. KBR Corp., 114 WLR 25 (Super. Ct. 1986).

A general contractor does not enjoy statutory immunity from tort suits by its subcontractors' employees as a result of its purchase of workmen's compensation insurance covering those employees. Hobbs v. KBR Corp., 114 WLR 25 (Super. Ct. 1986).

Subsidiaries.

Operations of employer's subsidiaries in District of Columbia did not supply legitimate basis for District of Columbia regulation of employer's west coast employment situation, and, therefore, children of deceased worker could not recover death benefits under Longshoremen's and Harbor Workers' Compensation Act as made applicable to District of Columbia. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-51, 33 U.S.C. §§ 901-950; D.C. Code 1973, § 36-501. Butler v. Continental Western Lines, etc., 668 F.2d 1374, 1981 U.S. App. LEXIS 15853 (C.A.D.C. 1981).

§ 32-1504. Exclusiveness of liability and remedy.

(a) The liability of an employer prescribed in § 32-1503 shall be exclusive and in place of all liability of such employer to the employee, his legal

representative, spouse or domestic partner, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law on account of such injury or death.

(b) The compensation to which an employee is entitled under this chapter shall constitute the employee's exclusive remedy against the employer, or any collective-bargaining agent of the employer's employees and any employee, officer, director, or agent of such employer, insurer, or collective-bargaining agent (while acting within the scope of his employment) for any illness, injury, or death arising out of and in the course of his employment; provided, that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action at law for damages on account of such injury or death. In such action the defendant may not plead as a defense that injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

(c) The furnishing of, or failure to furnish, insurance consultation services related to, in connection with or incidental to an applicable policy of insurance shall not subject the insurer, its agent or employees undertaking to perform such services to liability for damages from injury, death or loss occurring as a result of any act of omission in the course of such services.

(d) This section shall not apply:

(1) If the injury, loss or death occurred during the actual performance of consultation services and was caused by the active negligence of the carrier, its agent or employees which was the proximate cause of the injury, death or loss; or

(2) To any consultation services required to be performed under the provisions of a written service contract not incidental to an applicable policy of insurance.

(July 1, 1980, D.C. Law 3-77, § 5, 27 DCR 2503; Sept. 12, 2008, D.C. Law 17-231, § 31(b), 55 DCR 6758.)

Section references. — This section is referred to in § 32-1535.

Prior Codifications. — 1981 Ed., § 36-304.

Effect of amendments. — D.C. Law 17-231, in subsec. (a), substituted "spouse or domestic partner," for "husband or wife,".

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 32-408.

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ANALYSIS

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Actions against third persons.

Claim by producer of software for monitoring traffic flow, that it was entitled to equitable indemnification from Washington Metropolitan Area Transit Authority (WMATA) in connection with claims arising from train collision, was barred by exclusivity provision of District of Columbia Workers' Compensation Act; WMATA's duty of proper use and care of software producer's product extended only to its employees, not to software producer, and, thus, relationship between software producer and WMATA involved one-time sale of equipment with follow-up service, rather than ongoing and comprehensive contractual relationship involving day-to-day interaction and decisionmaking. Jenkins v. Wash. Metro. Area Transit Auth., 808 F.Supp.2d 154, 2011 U.S. Dist. LEXIS 98918 (2009).

Where an injured employee receives workers' compensation under the law of another jurisdiction and the defaulting employer is open to any liability it may be subject to for its lapse, the exclusivity provision of District of Columbia Workers' Compensation Act operates to bar a suit by the injured employee against a fellow employee. McGregor v. Grimes, 884 A.2d 605, 2005 D.C. App. LEXIS 505 (2005).

Employee who received compensation under the Maryland Workers' Compensation Act, which permitted suits against fellow employees, could not bring suit under District of Columbia workers' compensation law against co-employee, whose alleged negligence in driving vehicle caused employee's workplace injury; employer was a Maryland corporation, but the accident itself occurred in the District of Columbia, and exclusivity provision of District of Columbia Workers' Compensation Act barred suit. McGregor v. Grimes, 884 A.2d 605, 2005 D.C. App. LEXIS 505 (2005).

Exclusive remedy provision of District of Columbia's workers' compensation law barred employee from bringing negligence action against co-employee arising out of automobile accident which occurred while both employee and co-employee were in the course of their employment despite fact that employee had received benefits in Maryland. D.C. Code 1981, § 36-304. Cruz v. Paige, 683 A.2d 1121, 1996 D.C. App. LEXIS 228 (1996).

Exclusive remedy provision of District of Columbia's workers' compensation law barred employee from bringing negligence action against co-employee arising out of automobile accident which occurred while both employee and co-employee were in the course of their employment despite fact that employee had received benefits in Maryland. D.C. Code 1981, § 36-304. Cruz v. Paige, 683 A.2d 1121, 1996 D.C. App. LEXIS 228 (1996).

Negligence of restaurant employee's co-worker, who allegedly is controlled and supervised by independent contractor that operates restaurant, can serve as basis for negligence claim against independent contractor, even though employee has recovered worker's compensation from restaurant owner. D.C. Code 1981, § 36-304(a). Beegle v. Restaurant Mgmt., 679 A.2d 480, 1996 D.C. App. LEXIS 126 (1996).

Workers' compensation statute imposes liability on employers for employee's job-related injury arising out of, and in the course of, employment, and constitutes employee's exclusive remedy against employer, other employees, officers, directors, or agents of employer. D.C. Code 1981, § 36-304(a). Beegle v. Restaurant Mgmt., 679 A.2d 480, 1996 D.C. App. LEXIS 126 (1996).

Trial court did not abuse its discretion in granting injured employee's motion to voluntarily dismiss third-party claim against third party tort-feasor and in refusing to order compelled assignment of employee's claim to employer which had intervened to protect its workers' compensation lien; employer failed to establish that it suffered legal prejudice as a result of dismissal, considering that employer never took any steps to initiate its own cause of action against tort-feasor, and that it failed to pursue statutory assignment. D.C. Code § 36-335(b); Civil Rule 41(a)(2). Washington Metro. Area Transit Auth. v. Reid, 666 A.2d 41, 1995 D.C. App. LEXIS 196 (1995).

Exclusive remedy provision of workers' compensation scheme bars common-law suits only against the injured employees and immediate employer, and it allows suits against all others as third parties. D.C. Code 1981, § 36-304. Dominion Caisson Corp. v. Clark, 614 A.2d 529, 1992 D.C. App. LEXIS 265 (1992).

Under Workmen's Compensation Act of 1928, general contractor that did not itself obtain compensation for injured worker was immune from tort liability when subcontractor that directly employed worker did meet its statutory obligation to provide compensation. Longshore and Harbor Workers' Compensation Act, §§ 4(a), 5(a), 33 U.S.C. §§ 904(a), 905(a). Estep v. Construction General, Inc., 546 A.2d 376, 1988 D.C. App. LEXIS 118 (1988).

General contractor is not an "employer" immune from tort liability in suit brought by injured employee of subcontractor, where subcontractor has secured payment of workers' compensation to employee. D.C. Code 1981, §§ 36-301(10), 36-304(a, b). Meiggs v. Associated Builders, Inc., 545 A.2d 631, 1988 D.C. App. LEXIS 119 (1988), writ of certiorari denied by 490 U.S. 1116, 109 S. Ct. 3178, 104 L.

Ed. 2d 1040, 1989 U.S. LEXIS 2871, 57 U.S.L.W. 3813 (1989).

Actions by third persons against employers.

If third party sued by injured worker seeks recovery from worker's employer, such action may not be premised on theory of contribution from joint tort-feasor because, under exclusivity provision of Workers' Compensation Act, employer cannot be held liable in tort for injury to employee. D.C. Code 1981, § 36-304(a). Howard University v. Good Food Services, Inc., 608 A.2d 116, 1992 D.C. App. LEXIS 114 (1992).

Under independent duty theory of indemnity, third party is entitled to indemnity from employer if the two stand in special legal relationship that carries with it the obligation to indemnify the third party, and this right of indemnity may be enforced without offending exclusive remedy provision of workers' compensation statute. D.C. Code 1981, § 36-304(a). Myco, Inc. v. Super Concrete Co., 565 A.2d 293, 1989 D.C. App. LEXIS 205 (1989).

In order to establish right to indemnity under independent duty theory, obligation must arise out of specific duty of defined nature, separate from injury to employer, owed to third party by employer. D.C. Code 1981, § 36-304(a). Myco, Inc. v. Super Concrete Co., 565 A.2d 293, 1989 D.C. App. LEXIS 205 (1989).

When indemnity is based on special legal relationship existing separate and apart from any liability which employer might have had to injured employee, indemnity is allowed. D.C. Code 1981, § 36-304(a). Myco, Inc. v. Super Concrete Co., 565 A.2d 293, 1989 D.C. App. LEXIS 205 (1989).

Employer did not have special duty to protect contractor from liability after contractor installed electric motor on employer's power washer so as to entitle contractor to indemnity from employer after employee was electrocuted because of alleged improper maintenance of the washer, as exception to exclusivity provision of Workers' Compensation Act. D.C. Code 1981, § 36-304(a). Myco, Inc. v. Super Concrete Co., 565 A.2d 293, 1989 D.C. App. LEXIS 205 (1989).

Administrative jurisdiction.

Employee's common law assault and battery claim and false imprisonment claim against employer and supervisor should have been brought under the primary jurisdiction of the Department of Employment Services (DOES), pursuant to Workers' Compensation Act (WCA). Joyner v. Sibley Mem. Hosp., 826 A.2d 362, 2003 D.C. App. LEXIS 417 (2003).

When there is "substantial question" whether Workers' Compensation Act applies, administrative agency charged with implementing statute, given its special expertise, has primary jurisdiction to make initial determination concerning coverage before courts can exercise jurisdiction. D.C. Code 1981, § 36-304(a). Estate of Underwood v. National Credit Union Admin., 665 A.2d 621, 1995 D.C. App. LEXIS 168 (1995).

When injury occurs during performance of employee's duties, substantial question will exist as to whether Workers' Compensation Act applies, and thus agency will have primary jurisdiction, unless injuries were clearly not compensable under statute. D.C. Code 1981, §§ 36-303, 36-304(a). Estate of Underwood v. National Credit Union Admin., 665 A.2d 621, 1995 D.C. App. LEXIS 168 (1995).

Agents.

Determining whether master-servant or principal-agent relationship exists in given situation, for purposes of determining whether workers' compensation is employee's exclusive remedy, depends upon particular facts of each case; facts that should be considered include selection and engagement of servant, payment of wages, power to discharge, power to control servant's conduct, and whether work is part of employer's regular business. D.C. Code 1981, § 36-304(a). Beegle v. Restaurant Mgmt., 679 A.2d 480, 1996 D.C. App. LEXIS 126 (1996).

While no single factor is controlling, decisive test to determine whether master-servant or principal-agent relationship exists, for purposes of determining whether workers' compensation is employee's exclusive remedy, is whether employer has right to control and direct servant in performance of his work and manner in which work is to be done; "right to control" means right to control employee in performance of task and in its result, and not actual exercise of control or supervision. D.C. Code 1981, § 36-304(a). Beegle v. Restaurant Mgmt., 679 A.2d 480, 1996 D.C. App. LEXIS 126 (1996).

Courts generally look to actual relationship between parties as well as any written contract between them in analyzing employers' right to control, to determine whether master-servant or principal-agent relationship exists for purposes of determining whether workers' compensation is employee's exclusive remedy. D.C. Code 1981, § 36-304(a). Beegle v. Restaurant Mgmt., 679 A.2d 480, 1996 D.C. App. LEXIS 126 (1996).

Relevant inquiry, in determining whether alleged tort-feasor is agent of injured party's employer protected by exclusivity provisions of Workers' Compensation statute, is not whether employer actually exercises control, but whether it has right of control over alleged tort-feasor. D.C. Code 1981, § 36-304(b). Henderson v. Charles E. Smith Management, Inc., 567 A.2d 59, 1989 D.C. App. LEXIS 253 (1989).

Burden of proof.

Scientist's negligence, intentional and negli-

gent infliction of emotional distress, and strict liability claims against his employer's parent corporation, arising from his alleged exposure during a "clandestine experiment" to the pathogen causing Bovine Spongiform Encephalopathy, commonly known as "mad-cow disease," fell within the exclusive parameters of the District of Columbia's Workers' Compensation Act (WCA), and thus scientist's claims were barred. Doe v. United States, 797 F.Supp.2d 78, 2011 U.S. Dist. LEXIS 76466 (2011).

Scientist's negligence, intentional and negligent infliction of emotional distress, and strict liability claims against his employer, the subsidiary of a government contractor, arising from his alleged exposure during a "clandestine experiment" to the pathogen causing Bovine Spongiform Encephalopathy, commonly known as "mad-cow disease," fell within the exclusive parameters of the District of Columbia's Workers' Compensation Act (WCA), and not the exclusion for injuries specifically intended by an employer, and thus scientist's claims were barred; even if scientist had unknowingly participated in a "clandestine experiment," in that his coworkers had purposefully bypassed established safety protocol regarding the experiments with the intention of keeping their activities a secret, then subsidiary cannot be said to have intended his injury. Doe v. United States, 797 F.Supp.2d 78, 2011 U.S. Dist. LEXIS 76466 (2011).

Because the District of Columbia's Workers' Compensation Act (WCA) contains a number of presumptions that favor coverage, the employee bears the burden of proving that the WCA does not apply. Hamilton v. Sanofi-Aventis U.S., Inc., 628 F.Supp.2d 59, 2009 U.S. Dist. LEXIS 53136 (2009).

Construction with other laws.

Repeal of District of Columbia Workers' Compensation Act of 1928 had the effect of severing the application of the Longshoremen's and Harbor Workers' Compensation Act to the District of Columbia in 1982, and thus subsequent 1984 amendments to the Longshoremen's Act, which were designed to reverse United States Supreme Court's holding that general contractor was entitled to immunity against tort suits under section of the Longshoremen's Act, were without effect on the law of the District. D.C. Code 1928, § 36-501 et seq.; Longshore and Harbor Workers' Compensation Act, §§ 1 et seq., 5, 33 U.S.C. §§ 901 et seq., 905. Keener v. Wahington Metropolitan Area Transit Authority, 800 F.2d 1173, 1986 U.S. App. LEXIS 29827 (C.A.D.C. 1986), writ of certiorari denied by 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690, 1987 U.S. LEXIS 1123, 55 U.S.L.W. 3607 (1987).

District of Columbia Workers' Compensation Act (DCWCA), which provided exclusive remedy for injuries that occurred during course of employment, did not apply to claims involving injury resulting from an employee's willful intention to injure or kill himself, and therefore, did not apply to wrongful death action against employer by mother of security guard who committed suicide, such that federal district court had subject matter jurisdiction over claims. Rollins v. Wackenhut Servs., 802 F.Supp.2d 111, 2011 U.S. Dist. LEXIS 88307 (2011), affirmed by 703 F.3d 122, 2012 U.S. App. LEXIS 26549, 34 I.E.R. Cas. (BNA) 1364 (D.C. Cir. 2012).

Exclusivity clause of Workers' Compensation Act did not bar employee from seeking benefits from employer under No-Fault Act. D.C. Code 1981, §§ 35-2101 to 35-2113, 36-304. Holmes v. Washington Metro. Area Transit Authority, 731 F. Supp. 1115, 1990 U.S. Dist. LEXIS 889 (1990).

Limiting claims for emotional distress from sexual harassment to administrative remedy under Workers' Compensation Act would frustrate implementation of Human Rights Act, proscribing sex discrimination in workplace, not only by creating problems of judicial economy, but also by forcing party seeking relief under emotional distress label to settle for remedy out of keeping with kind of injury involved. D.C. Code 1981, § 1-2501 et seq. Estate of Underwood v. National Credit Union Admin., 665 A.2d 621, 1995 D.C. App. LEXIS 168 (1995).

Election.

An employee who elects to bring action at law against employer who failed to secure payment of compensation as required by Workmen's Compensation Act as authorized by the Act has affirmative duty of showing negligence equally as great as in any other tort action. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 4(b), 5, 33 U.S.C. §§ 901 et seq., 904(b), 905; D.C. Code 1940, § 36-501 et seq. Garcia v. De Leon, 59 A.2d 637, 1948 D.C. App. LEXIS 153 (Cr.App. 1948).

The alternative remedy against an employer who fails to secure payment of compensation as required by Workmen's Compensation Act provided by section authorizing an election to claim compensation or to maintain action in law or in admiralty for damages on account of injury or death of employee is elective. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 4(b), 5, 33 U.S.C. §§ 901 et seq., 904(b), 905; D.C. Code 1940, § 36-501 et seq. Garcia v. De Leon, 59 A.2d 637, 1948 D.C. App. LEXIS 153 (Cr.App. 1948).

Emotional distress.

Coverage under the District of Columbia's Workers' Compensation Act (WCA) extends to claims for emotional distress or mental anguish

where the underlying tort is covered by the WCA. Vanzant v. Wash. Metro. Area Transit Auth., 557 F.Supp.2d 113, 2008 U.S. Dist. LEXIS 42788 (2008).

Exclusivity provision of District of Columbia Workers Compensation Act (WCA) did not bar employee's emotional distress claims arising from alleged hostile environment sexual and national origin harassment; although employee sought damages in tort for both sexual harassment and other forms of discrimination, her sexual harassment and national origin claims were based on the same facts. D.C. Code 1981, §§ 36-301 et seq., 36-301(12). Lucero-Nelson v. Washington Metro. Area Transit Auth., 1 F.Supp.2d 1, 1998 U.S. Dist. LEXIS 6928 (1998), appeal dismissed by 2005 U.S. App. LEXIS 14828 (D.C. Cir. July 19, 2005).

District of Columbia Worker's Compensation Act precluded employee's common-law claims of assault and battery, and intentional and negligent infliction of emotional distress against employer and co-worker who allegedly made inappropriate sexual advances, and negligent hiring and supervision claim against employer. D.C. Code 1981, § 36-301 et seq. Tatum v. Hyatt Corp., 918 F. Supp. 5, 1994 U.S. Dist. LEXIS 20879 (1994).

Employee's claim for emotional distress arising from alleged pregnancy discrimination, seeking damages because of her gender, was not barred by the District of Columbia Workers' Compensation Act. D.C. Code 1981, § 36-301 et seq. Harvey v. Strayer College, 911 F. Supp. 24, 1996 U.S. Dist. LEXIS 504 (1996).

Worker's claim for intentional infliction of emotional distress due to fact that he was falsely accused of stealing from the company, leading him to attempt to commit suicide a month later, was not barred by statutory remedy of workers' compensation as the false accusation caused no physical or mental injury resulting in the loss of wages. D.C. Code 1981, § 36-301(8). Chung v. Lee, 852 F. Supp. 43, 1994 U.S. Dist. LEXIS 6301 (1994).

Workers' compensation claim of psychological injury was insufficient as matter of law, though claimant's psychiatrist opined that claimant's bus door accident caused emotional stress because it placed limitations on her activities, given that claimant admitted she was predisposed to psychological problems, and psychiatrist's opinion did not indicate that the conditions that caused the emotional injury were so stressful that a reasonable person not predisposed to psychological injury might suffer the same injury. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Psychiatrist's opinion that a work-related accident caused emotional stress on claimant because it placed limitations on her activities, without more, is insufficient to support a claim of disability based on emotional injury. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Psychological injuries are only compensable under the Workers' Compensation Act if the accident constitutes a sufficient stressor. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Employers within act.

Because Washington Metropolitan Area Transit Authority was not legally required to provide compensation insurance for employees of its subcontractors on subway construction project, but did so as a matter of administrative convenience, its voluntary decision to provide that insurance did not entitle it to the statutory employer immunity of Longshoremen's and Harbor Workers' Compensation Act. Longshoremen's and Harbor Workers' Compensation Act, § 5(a), as amended, 33 U.S.C. § 905(a). Johnson v. Bechtel Assocs. Professional Corp., 717 F.2d 574, 1983 U.S. App. LEXIS 24723 (C.A.D.C. 1983), reversed by, remanded by 467 U.S. 925, 104 S. Ct. 2827, 81 L. Ed. 2d 768, 1984 U.S. LEXIS 122, 52 U.S.L.W. 4869, 49 Cal. Comp. Cases 816 (1984).

There were substantial questions as to whether an employee's claim for injuries arising from his alleged false imprisonment was covered under the District of Columbia's (DC) Workers' Compensation Act (WCA), and thus, the claim had to be brought before the DC Department of Employment Services (DOES) for a determination in the first instance; there were issues as to whether the corporate employer's officials were acting directly with the full authority and as the alter ego of the corporate entity and whether, if so, they acted with the specific intent to harm the employee. Hamilton v. Sanofi-Aventis U.S., Inc., 628 F.Supp.2d 59, 2009 U.S. Dist. LEXIS 53136 (2009).

Regulations which required government to have employer procure workers' compensation insurance and then to reimburse employer for reasonable cost of that insurance did not render government "employer" within meaning of District of Columbia Workers' Compensation Act; thus, government was not immune from liability under provision of District of Columbia's Workers' Compensation Act [D.C. Code 1981, § 36-304] governing exclusiveness of liability and remedy. D.C. Code 1981, §§ 36-301 to 36-345. Allen v. United States, 625 F. Supp. 841, 1986 U.S. Dist. LEXIS 30729 (1986).

One may not escape from common-law tort liability by taking out workers' compensation insurance that law does not require; moreover, only entity with actual legal duty to provide compensation comes under immunity umbrella of District of Columbia Workers' Compensation Act. D.C. Code 1981, §§ 36-301 to 36-345. Allen

v. United States, 625 F. Supp. 841, 1986 U.S. Dist. LEXIS 30729 (1986).

Estoppel.

Under District of Columbia promissory estoppel doctrine, agreement settling construction worker's personal injury claims was enforceable against electrical subcontractor and general contractor, although there was no meeting of the minds between contractor and subcontractor as to whether agreement settled contractor's crossclaim against subcontractor for defense costs; worker negotiated settlement in good faith reliance on actual authority of subcontractor's attorney to bind both defendants, and worker agreed to his detriment to both abandon his right to go to trial and to settle a worker's compensation lien from his settlement proceeds, and it would be inequitable to the point of being unconscionable to let defendants escape from settlement because of confusion that could have been avoided had defendants made their intentions clear to one another. Casanova v. Marathon Corp., 715 F.Supp.2d 35, 2010 U.S. Dist. LEXIS 54266 (2010).

General contractors and subcontractors.

Tort claim against United States under law of District of Columbia would be barred by exclusivity provision of the District of Columbia Workers' Compensation Act and, therefore, United States was not liable under Federal Tort Claims Act for injuries sustained when employee of security service slipped and fell while performing her duties as a security guard for a federal facility, where Government had duty to reimburse service for workers' compensation insurance premiums; security service's status was that of subcontractor, rather than independent contractor, and thus, the United States was obligated to pay compensation under the Workers' Compensation Act and was entitled to exclusive remedy defense. D.C. Code 1981, §§ 36-303(b, c), 36-304(a, b); 18 U.S.C. §§ 1346(b), 2671 et seq. Thompson v. United States, 670 F. Supp. 5, 1985 U.S. Dist. LEXIS 13506 (1985).

Worker killed in workplace fall was sole employee of subcontractor, not borrowed or joint employee of general contractor, and thus subcontractor was solely liable for paying workers' compensation death benefits, although worker volunteered to help general contractor for 10 minutes after finishing shift with subcontractor, where worker was not paid for this help, and showed no intent to enter employment relationship with general contractor. Union Light & Power Co. v. D.C. Dep't of Empl. Servs., 796 A.2d 665, 2002 D.C. App. LEXIS 85 (2002).

Contractor that installed electric motor on employer's power washer could not seek indemnity from employer in action arising when employee was electrocuted under "active/passive" theory of implied indemnity, exclusivity provision of Workers' Compensation Act. D.C. Code 1981, § 36-304(a). Myco, Inc. v. Super Concrete Co., 565 A.2d 293, 1989 D.C. App. LEXIS 205 (1989).

General contractor is not an "employer" immune from tort liability in suit brought by injured employee of subcontractor, where subcontractor has secured payment of workers' compensation to employee. D.C. Code 1981, §§ 36-301(10), 36-304(a, b). Meiggs v. Associated Builders, Inc., 545 A.2d 631, 1988 D.C. App. LEXIS 119 (1988), writ of certiorari denied by 490 U.S. 1116, 109 S. Ct. 3178, 104 L. Ed. 2d 1040, 1989 U.S. LEXIS 2871, 57 U.S.L.W. 3813 (1989).

Under the District of Columbia Workers' Compensation Act of 1979 a general contractor is not immune from suit by an injured employee of its subcontractor unless the general contractor secures the payment of statutory compensation to the injured employee after the subcontractor fails to secure such compensation. Hobbs v. KBR Corp., 114 WLR 25 (Super. Ct. 1986).

A general contractor does not enjoy statutory immunity from tort suits by its subcontractors' employees as a result of its purchase of workmen's compensation insurance covering those employees. Hobbs v. KBR Corp., 114 WLR 25 (Super. Ct. 1986).

In general.

Workmen's compensation law was exclusive remedy of employee against employer for injuries sustained while employee was being driven home by another employee's husband, in accordance with arrangement made by employer. D.C. Code 1951, § 36-501; Longshoremen's and Harbor Workers' Compensation Act, §§ 1-50, 7-33 as amended 33 U.S.C. §§ 901-950, 907-933. Shreve v. Hot Shoppes, Inc., 292 F.2d 761, 1961 U.S. App. LEXIS 4409 (C.A.D.C. 1961).

Exclusive remedy provision of the Workmen's Compensation Act barred a suit by an employee, against his employer, for damages for alleged malpractice at employer's hospital in treatment of a compensable injury, and fortuity that employer operated the hospital where the professional services complained of were rendered was immaterial. 18 U.S.C. § 294(a); Longshoremen's and Harbor Workers' Compensation Act, § 5, 33 U.S.C. § 905; D.C. Code 1951, § 36-501. Lindsay v. George Washington University, 279 F.2d 819, 1960 U.S. App. LEXIS 4413 (C.A.D.C. 1960).

In absence of evidence that employer had intended the supervisor's actions, the District of Columbia's Workers' Compensation Act (WCA) was the employee's exclusive remedy, thereby precluding employee from bringing

common-law claims against employer and supervisor for assault and intentional or negligent infliction of emotional distress, alleging that supervisor intentionally struck employee on the head during a meeting, in the workplace, at which supervisor hollered, cursed, and behaved belligerently. Vanzant v. Wash. Metro. Area Transit Auth., 557 F.Supp.2d 113, 2008 U.S. Dist. LEXIS 42788 (2008).

Where employer had agreed to transport employee home, injury sustained by employee while being driven by person to whom employer had delegated this duty was not, as a matter of law, outside the District of Columbia Workmen's Compensation Law. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 5, 33 U.S.C. §§ 901 et seq., 905; D.C. Code 1951, § 36-501; Fed.Rules Civ.Proc. rule 8(c), 18 U.S.C. Shreve v. Hot Shoppes, Inc., 184 F.Supp. 436, 1960 U.S. Dist. LEXIS 4092 (D.D.C1960).

The liability of the employer under the Workmen's Compensation Act is exclusive. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1951, §§ 36-501, 36-502, 33 U.S.C. § 901 note. Brown v. Curtin & Johnson, Inc., 117 F.Supp. 830, 1954 U.S. Dist. LEXIS 4646 (D.D.C1954).

When employee is injured or killed in course of employment, workers' compensation is exclusive remedy available to employee. D.C. Code 1981, § 36-304(a). Hicks v. Allegheny E. Conf. Ass'n of Seventh-Day Adventists, 712 A.2d 1021, 1998 D.C. App. LEXIS 112 (1998).

Fact that party paid claimant's salary was not adequate basis upon which to determine relationships of parties and whether workers' compensation was employee's exclusive remedy for work related accident. D.C. Code 1981, § 36-304(a). Beegle v. Restaurant Mgmt., 679 A.2d 480, 1996 D.C. App. LEXIS 126 (1996).

Workers' Compensation Act makes employer liable without fault if employee's occupational injury or death falls within scope of Act, but as quid pro quo for automatic liability, Act provides employee's exclusive remedy against employer for injuries within its reach. D.C. Code 1981, § 36-304(a). Estate of Underwood v. National Credit Union Admin., 665 A.2d 621, 1995 D.C. App. LEXIS 168 (1995).

Where an employer maintains compensation insurance or otherwise provides for payment of benefits, his liability for injuries sustained by an employee in course of employment is as prescribed by the statute and is exclusive and in place of all other liability to the employee. D.C. Code 1961, § 36-501; Longshoremen's and Harbor Workers' Compensation Act, §§ 1-50, 33 U.S.C. §§ 901-950. Howard v. Lightner, 214 A.2d 474, 1965 D.C. App. LEXIS 262 (App. 1965).

Where employer fails to secure workmen's compensation coverage and the employee files an action at law to recover for injuries sustained in course of his employment, the statute abolishes the ordinarily available defenses of contributory negligence, assumption of risk of employment, or that the cause was a fellow-employee's negligence, but beyond that there is no change in common-law rights and liabilities. D.C. Code 1961, § 36-501; Longshoremen's and Harbor Workers' Compensation Act, §§ 1-50, 38, 33 U.S.C. §§ 901-950, 938. Howard v. Lightner, 214 A.2d 474, 1965 D.C. App. LEXIS 262 (App. 1965).

Subsection (b) of this section does not prohibit an agreement indemnifying one against his own negligence. DiNicola v. George Hyman Constr. Co., 110 WLR 897 (Super. Ct. 1982).

Injunctive relief.

Private school teacher, who received workers' compensation benefits as result of injury suffered during altercation with student, was not precluded by the Workers' Compensation Act from seeking injunctive relief to enforce the provisions of her employment contract; teacher's claim sounded in equity, and thus, it was not action seeking "to recover damages at law" within meaning of exclusive remedy provision of Act. D.C. Code 1981, § 36-304(a). Hicks v. Allegheny E. Conf. Ass'n of Seventh-Day Adventists, 712 A.2d 1021, 1998 D.C. App. LEXIS 112 (1998).

Intentional injuries.

Under law of District of Columbia, injured employee's action against employer for intentional infliction of emotional distress and bad-faith refusal to make timely workers' compensation payments was barred by exclusivity provision of Workers' Compensation Act. D.C. Code 1973, § 36-501 et seq. Hall v. C & P Tel. Co., 793 F.2d 1354, 1986 U.S. App. LEXIS 27495 (C.A.D.C. 1986).

In the District of Columbia, the Workers' Compensation Act (WCA) is the exclusive remedy for a workplace injury, and the only injuries that fall outside the scope of the WCA are injuries specifically intended by the employer to be inflicted on the particular employee who is injured. Vanzant v. Wash. Metro. Area Transit Auth., 557 F.Supp.2d 113, 2008 U.S. Dist. LEXIS 42788 (2008).

The District of Columbia's Workers' Compensation Act (WCA) covers injuries that are the result of willful and intentional conduct of either a fellow employee or a third party, so long as the employer did not intend those parties' actions. Vanzant v. Wash. Metro. Area Transit Auth., 557 F.Supp.2d 113, 2008 U.S. Dist. LEXIS 42788 (2008).

District of Columbia Workers' Compensation Act did not preempt District employee's claim

for intentional infliction of emotional distress, which was related to her claims of sexual harassment and retaliation. D.C. Code 1981,§ 36-301 et seq. Webb v. Hyman, 861 F. Supp. 1094, 1994 U.S. Dist. LEXIS 11554 (1994).

An employee who has recovered under the Longshoremen's and Harbor Workers' Compensation Act may not maintain a tort action against his employer alleging willful, wanton, reckless and unlawful misconduct; nothing short of a specific intent to injure employee falls outside the scope of the exclusive liability provision of Act. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 5(a), 33 U.S.C. §§ 901 et seq., 905(a). Houston v. Bechtel Associates Professional Corp., D. C., 522 F. Supp. 1094, 1981 U.S. Dist. LEXIS 9835 (1981).

Only injuries specifically intended by employer to be inflicted on particular employee who was injured fall outside of exclusivity provisions of Workers' Compensation Act, and evidence that employer's knowledge with substantial certainty that injury will result from acts does not equate with specific intent to injure or kill when injury is caused by intentional act of third person. D.C. Code 1981, §§ 36-301(12), 36-304. Grillo v. National Bank of Washington, 540 A.2d 743, 1988 D.C. App. LEXIS 31 (1988).

Bank did not commit intentional tort upon teller killed during course of robbery through removal as part of remodeling project of safety glass that would have prevented robber from leaning over counter and shooting teller; thus, wrongful death action against bank by teller's estate and daughter was barred by exclusive remedy provisions of Workers' Compensation Act. D.C. Code 1981, §§ 36-301(12), 36-304. Grillo v. National Bank of Washington, 540 A.2d 743, 1988 D.C. App. LEXIS 31 (1988).

Joint liability.

Generally, workmen's compensation is exclusive remedy and employer cannot be joint tortfeasor. Murray v. United States, 405 F.2d 1361, 1968 U.S. App. LEXIS 5068 (C.A.D.C. 1968).

There is no joint liability between employer and third party liable to employee in tort. Anthony v. Norfleet, 330 F. Supp. 1211, 1971 U.S. Dist. LEXIS 12594 (1971).

Under exclusivity provision of Workers' Compensation Act, employer cannot be liable in tort to employee for injury, and therefore cannot be jointly liable with third party under "active/passive" theory of implied indemnity. D.C. Code 1981, § 36-304(a). Myco, Inc. v. Super Concrete Co., 565 A.2d 293, 1989 D.C. App. LEXIS 205 (1989).

Jurisdiction of courts.

In personal injury action by union musician employed at restaurant where defendant restaurant claimed that plaintiff was its employee and was limited to claim under Workmen's Compensation Act, a contract purporting to be a contract of employment negotiated and executed by or for a union representing employees was admissible irrespective of whether it had been signed by the plaintiff. 18 U.S.C. § 695; Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, §§ 36-501, 36-502, 33 U.S.C. § 901 note. Earle Restaurant v. O'Meara, 160 F.2d 275, 1947 U.S. App. LEXIS 3306 (1947).

Trial court's jurisdiction over employee's common law emotional distress claim depends on whether her claim is "clearly" outside Workers' Compensation Act coverage. D.C. Code 1981, § 36-304(a). Estate of Underwood v. National Credit Union Admin., 665 A.2d 621, 1995 D.C. App. LEXIS 168 (1995).

Law governing.

Claim that admissions financial advisor for hospital was injured, by bad air generated by defective air conditioner which hospital delayed fixing, was preempted by workers' compensation law. Everson v. Medlantic Healthcare Group, 414 F.Supp.2d 77, 2006 U.S. Dist. LEXIS 5178 (2006).

It is not unreasonable to consider the workers' compensation insurance coverage provided under another jurisdiction's workers' compensation law to constitute compensation to which the employee is entitled "under this chapter" within meaning of exclusivity provision of District of Columbia Workers' Compensation Act stating that compensation to which an employee is entitled "under this chapter" shall constitute the employee's exclusive remedy against the employer. McGregor v. Grimes, 884 A.2d 605, 2005 D.C. App. LEXIS 505 (2005).

District of Columbia, rather than Virginia, workers' compensation law would apply to determine whether exclusive remedy barred claim of injured worker against general contractor and subcontractor; worker and employers were Virginia residents, but accident occurred in the District of Columbia. D.C. Code 1981, § 36-304. Dominion Caisson Corp. v. Clark, 614 A.2d 529, 1992 D.C. App. LEXIS 265 (1992).

Summary judgment.

Dismissal on defendant employer's and defendant supervisor's motion for summary judgment, rather than a stay for agency proceedings, was appropriate, upon determination by district court that District of Columbia's Workers' Compensation Act (WCA) was plaintiff employee's exclusive remedy, thereby precluding employee from bringing common-law claims in district court against employer and supervisor for assault and intentional or negligent infliction of emotional distress, alleging that supervisor intentionally struck employee on the head

during a meeting, in the workplace, at which supervisor hollered, cursed, and behaved belligerently; the WCA's applicability did not present a substantial question warranting a stay to enable an administrative agency to determine coverage under the WCA in the first instance. Vanzant v. Wash. Metro. Area Transit Auth., 557 F.Supp.2d 113, 2008 U.S. Dist. LEXIS 42788 (2008).

Timely payments actions.

Employee was barred by the District of Columbia Workers' Compensation Act from bringing tort claim for employer's refusing to make timely compensation payments with intent to injure; Act provided general immunity to employers from employee tort suit, and also provided specific remedy for employer's late payment of claims. D.C. Code 1981, § 36-301 et seq.; Longshore and Harbor Workers' Compensation Act, §§ 5(a), 14(e, f), 33 U.S.C. §§ 905(a), 914(e, f). Hall v. C & P Tel. Co., 809 F.2d 924, 1987 U.S. App. LEXIS 1273 (C.A.D.C. 1987).

Employee who recovered workers' compensation under exclusive statutory scheme had no right to institute separate action against employer and employer's insurance carrier for their alleged failure to make timely payments. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-51, as amended, 33 U.S.C. §§ 901-950; D.C. Code 1973, § 36-501. Garrett v. Washington Air Compressor Co., 466 A.2d 462, 1983 D.C. App. LEXIS 466 (1983).

§ 32-1505. Commencement of compensation; maximum compensation.

(a) No compensation shall be allowed for the first 3 days of the disability, except the benefits provided for in § 32-1507; provided, that in case the injury results in disability of more than 14 days the compensation shall be allowed from the date of the disability.

(b) Compensation for disability or death shall not exceed the average weekly wages of insured employees in the District of Columbia or $396.78, whichever is greater. For any one injury causing temporary or permanent partial disability, the payment for disability benefits shall not continue for more than a total of 500 weeks. Within 60 days of the expiration of the duration of the compensation provided for in this subsection, an employee may petition the Mayor for an extension of up to 167 weeks. The extension shall be granted only upon a finding by an independent medical examiner appointed by the Mayor of continued whole body impairment exceeding 20% under the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. An injured employee shall have up to 3 years after termination of nonscheduled benefits to re-open his or her case due to changes in condition.

(c) The minimum compensation for total disability or death shall be 25% of the maximum compensation.

(d) For the purposes of this section, the average weekly wage of insured employees in the District of Columbia shall be determined by the Mayor as follows: On or before November 1st of each year, the total wages reported on contribution reports for employees, excluding employees of the government of the District of Columbia, and the government of the United States, to the District Unemployment Compensation Board for the year ending on the preceding June 30th shall be divided by the average monthly number of such employees (determined by dividing the total employees reported for the preceding year, excluding employees of the government of the District of Columbia, and the government of the United States by 12). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the nearest cent. The average weekly wage as so

determined shall be applicable for the year beginning the following January 1st.

(e) The average weekly wage shall not be deemed to have changed for any calendar year unless the computation in subsection (d) of this section results in an increase or decrease of $2 or more, raised to the next even dollar.

(July 1, 1980, D.C. Law 3-77, § 6, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(c), 46 DCR 891.)

Section references. — This section is referred to in § 32-1506.

Prior Codifications. — 1981 Ed., § 36-305.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 12-229. — For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

CASE NOTES

ANALYSIS

In general.
Minimum compensation.

In general.

Ruling by department of employment services that benefit ceiling applied to permanent disability awards for scheduled injuries was reasonable interpretation that would not be disturbed by court on judicial review. D.C. Code 1981, § 36-305(a). Daniel v. District of Columbia Dep't of Employment Servs., 673 A.2d 205, 1996 D.C. App. LEXIS 49 (1996).

Minimum compensation.

Workers' compensation claimant was not entitled to the minimum compensation rate because he was temporarily totally disabled; statute provided that minimum compensation for total disability or death shall be 25% of the maximum compensation, and section-by-section analysis included in the Committee Report stated that the provision at issue established minimum compensation for total permanent disability or death. Hiligh v. D.C. Dep't of Empl. Servs., 935 A.2d 1070, 2007 D.C. App. LEXIS 655 (2007).

Given the thoughtful analysis by Compensation Review Board of the workers' compensation statute it was charged with administering, along with language of legislative history, the Board's conclusion, that the minimum compensation rate was inapplicable to persons who were temporarily totally disabled, was neither plainly erroneous nor inconsistent with the enabling statute, providing that minimum compensation for total disability or death shall be 25% of the maximum compensation; section-by-section analysis included in the Committee Report stated that the provision at issue established minimum compensation for total permanent disability or death. Hiligh v. D.C. Dep't of Empl. Servs., 935 A.2d 1070, 2007 D.C. App. LEXIS 655 (2007).

§ 32-1506. Supplemental allowance.

(a) When the average weekly wage has changed as provided for in § 32-1505, any person who has a total and permanent disability or any surviving spouse or domestic partner who is receiving payments for income benefits under this chapter in amounts per week less than the new maximum for total disability or death shall receive weekly from the carrier, without application, an additional supplemental allowance calculated by the Mayor in accordance with the provisions of subsections (b) and (c) of this section; provided, that such allowance shall not commence to accrue and be payable until the average weekly wage exceeds $396.78. The Mayor shall notify the carrier of the amount of such additional supplemental allowance.

(b) In any case where a person with a total disability, or surviving spouse or domestic partner is receiving the maximum weekly income benefit applicable at the time such award was made under this chapter, the supplemental

allowance shall be an amount which, when added to such award, will equal the new maximum weekly benefit.

(c) In any case where a person with a total disability, or a surviving spouse or domestic partner is receiving less than the maximum weekly income benefit rate applicable at the time such award was made under this chapter, the supplemental allowance shall be an amount equal to the difference between the amount the claimant is presently receiving and a percentage of the new maximum determined by multiplying it by a fraction, the numerator of which is his present award and the denominator of which is the maximum weekly rate applicable at the time such award was made.

(d) No supplemental allowance referred to in subsections (b) and (c) of this section shall exceed 5% of the maximum weekly benefit received the preceding benefit year.

(July 1, 1980, D.C. Law 3-77, § 7, 27 DCR 2503; Apr. 24, 2007, D.C. Law 16-305, § 48(a), 53 DCR 6198; Sept. 12, 2008, D.C. Law 17-231, § 31(c), 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 36-306.

Effect of amendments. — D.C. Law 16-305, in subsec. (a), substituted "a total and permanent disability" for "been totally and continuously disabled"; and in subsecs. (b) and (c), substituted "person with a total disability" for "totally disabled person".

D.C. Law 17-231 substituted "surviving spouse or domestic partner" for "widow or widower".

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 32-241.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 32-408.

CASE NOTES

ANALYSIS

Construction and application.
In general.
Judicial review.

Construction and application.

Workers' compensation statutes are to be liberally construed for the benefit of the employee. D.C. Code 1981, § 36-301 et seq. Hively v. District of Columbia Dep't of Empl. Servs., 681 A.2d 1158, 1996 D.C. App. LEXIS 171 (1996).

Construction of statute on supplemental workers' compensation benefits by Department of Employment Services was entitled to judicial deference because it was one basic to agency's function of awarding compensation. D.C. Code 1981,§§ 1-1510(a)(3), 36-303(a)(1). Lee v. District of Columbia Dep't of Employment Services, 509 A.2d 100, 1986 D.C. App. LEXIS 327 (1986).

In general.

Individuals with temporary disabilities are not eligible for supplemental allowances under Workers' Compensation Act. D.C. Code 1981, § 36-301 et seq. Hively v. District of Columbia Dep't of Empl. Servs., 681 A.2d 1158, 1996 D.C. App. LEXIS 171 (1996).

Judicial review.

Decision of Director of Department of Employment Services (DOES), who adopted hearing examiner's order virtually without comment and did not interpret the workers' compensation statute bearing on supplemental allowances, would be vacated and remanded. D.C. Code 1981, § 36-306. Long v. District of Columbia Dep't of Empl. Servs., 717 A.2d 329, 1998 D.C. App. LEXIS 156 (1998).

§ 32-1507. Medical services, supplies, and insurance.

(a) The employer shall furnish such medical, surgical, vocational rehabilitation services, including necessary travel expenses and other attendance or

treatment, nurse and hospital service, medicine, crutches, false teeth or the repair thereof, eye glasses or the repair thereof, artificial or any prosthetic appliance for such period as the nature of the injury or the process of recovery may require. The employer shall furnish such additional payment as the Mayor may determine is necessary for the maintenance of an employee undergoing vocational rehabilitation, not to exceed $50 a week.

(a-1)(1) Any employer who provides health insurance coverage for an employee shall provide health insurance coverage equivalent to the existing health insurance coverage of the employee while the employee receives or is eligible to receive workers' compensation benefits under this chapter.

(2) For purposes of this subsection, the phrase "eligible to receive" means:

(A) An employee is away from work due to a job-related injury for which the employee has filed a claim for workers' compensation benefits under this chapter; or

(B) An employer has knowledge of a job-related injury of an employee who is away from work due to the job-related injury pursuant to which workers' compensation benefits may become due under § 32-1515.

(3) The provision of health insurance coverage shall not exceed 52 weeks and shall be at the same benefit level that the employee had at the time the employee received or was eligible to receive workers' compensation benefits.

(4) Except as provided in paragraph (3) of this subsection, an employer shall pay the total cost for the provision of health insurance coverage during the time that the employee receives or is eligible to receive workers' compensation benefits under this chapter, including any contribution that the employee would have made if the employee had not received or been eligible to receive workers' compensation benefits.

(5) Each provider of medical care or services pursuant to this chapter shall use a standard coding system for reports and bills generated pursuant to this chapter. Medical care and services shall be billed at the rate established in the medical fee schedule adopted by the Mayor. This fee schedule shall be based on 113% of Medicare's reimbursement amounts.

(b)(1), (2) Repealed.

(3) The employee shall have the right to choose an attending physician to provide medical care under this chapter. If, due to the nature of the injury, the employee is unable to select a physician and the nature or the injury requires immediate treatment and care, the employer shall select a physician for him. Where medically necessary or advisable, or at the request of the employee, the attending physician shall consult with the employee's personal physician.

(4) The Mayor shall supervise the medical care rendered to injured employees, shall require periodic reports as to the medical care being rendered to injured employees, shall have the authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished, and may order a change of physician or hospital when in his judgment such change is necessary or desirable.

(5) Each person who provides medical care or service under this chapter shall utilize a standard coding system for reports and bills pursuant to rules issued by the Mayor. Medical care and service shall be billed at a usual and customary rate.

(6) Any medical care or service furnished or scheduled to be furnished under this chapter shall be subject to utilization review. Utilization review may be accomplished prospectively, concurrently, or retrospectively.

(A) In order to determine the necessity, character, or sufficiency of any medical care or service furnished or scheduled to be furnished under this chapter and to allow for the performance of competent utilization review, a utilization review organization or individual used pursuant to this chapter shall be certified by the Utilization Review Accreditation Commission.

(B) When it appears that the necessity, character, or sufficiency of medical care or service to an employee is improper or that medical care or service scheduled to be furnished must be clarified, the Mayor, employee, or employer may initiate review by a utilization review organization or individual.

(C) If the medical care provider disagrees with the opinion of the utilization review organization or individual, the medical care provider shall have the right to request reconsideration of the opinion by the utilization review organization or individual 60 calendar days from receipt of the utilization review report. The request for reconsideration shall be written and contain reasonable medical justification for the reconsideration.

(D) Disputes between a medical care provider, employee, or employer on the issue of necessity, character, or sufficiency of the medical care or service furnished, or scheduled to be furnished, or the fees charged by the medical care provider shall be resolved by the Mayor upon application for a hearing on the dispute by the medical care provider, employee, or employer. A party who is adversely affected or aggrieved by the decision of the Mayor may petition for review of the decision by the District of Columbia Court of Appeals.

(E) The employer shall pay the cost of a utilization review if the employee seeks the review and is the prevailing party.

(7) Medical care providers shall not hold employees liable for service rendered in connection with a compensable injury under this chapter.

(c) Vocational rehabilitation shall be designed, within reason, to return the employee to employment at a wage as close as possible to the wage that the employee earned at the time of injury. The Mayor shall monitor the provision of vocational rehabilitation of employees with disabilities and determine the adequacy and sufficiency of such rehabilitation. Where, in the judgment of the Mayor, the employer fails or refuses to provide adequate and sufficient rehabilitation services as required in subsection (a) of this section, the Mayor may order that the supplier of such services be changed, and may use the special fund provided in § 32-1543 in such amounts as may be necessary to procure such services, including necessary prosthetic appliances or other apparatus. When the Mayor pays for such services out of the special fund, he shall institute proceedings against such employer to recover the amounts expended.

(d) If the employer fails to provide the medical or other treatment, services, supplies, or insurance coverage required to be furnished by subsections (a) and (a-1) of this section, after request by the injured employee, such injured employee may procure the medical or other treatment, services, supplies, or

insurance coverage and select a physician to render treatment and services at the expense of the employer. The employee shall not be entitled to recover any amount expended for the treatment, service, or insurance coverage unless the employee requested the employer to furnish the treatment or service or to furnish the health insurance coverage and the employer refused or neglected to do so, or unless the nature of the injury required the treatment or service and the employer or his superintendent or foreman having knowledge of the injury neglected to provide the treatment or service; nor shall any claim for medical or surgical treatment be valid or enforceable, as against the employer, unless within 20 days following the 1st treatment the physician giving the treatment furnishes to the employer and the Mayor a report of the injury or treatment, on a form prescribed by the Mayor. The Mayor may, however, excuse the failure to furnish such report within 20 days when he finds it to be in the interest of justice to do so, and he may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee. If at any time during such period the employee unreasonably refuses to submit to medical or surgical treatment or to an examination by a physician selected by the employer, or to accept vocational rehabilitation the Mayor shall, by order, suspend the payment of further compensation, medical payments, and health insurance coverage during such period, unless the circumstances justified the refusal.

(e) Whenever, in the opinion of the Mayor, the injured employee or his employer, a physician has improperly estimated the degree of permanent disability or the extent of temporary disability occasioned by the injury or where in the opinion of such parties a physician recommends a treatment for an injury not generally recognized by the medical community the Mayor shall cause such employee to be examined by another physician selected by the Mayor and to obtain from such physician a report containing his estimate of such disabilities and a recommendation for treatment. If the report of such physician shows that the estimate of the former physician is improper or that the treatment recommended is not one that is generally recognized in the medical community, the Mayor shall have the power in his discretion to charge the cost of such examination to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk, or, in appropriate cases, to the special fund.

(f) All fees and other charges for such treatment or service shall be limited to such charges as prevail in the same community for similar treatment of injured persons and shall be subject to regulation by the Mayor.

(g) The liability of an employer for medical treatment as provided in this section shall not be affected by the fact that his employee was injured through the fault or negligence of a third party not in the same employ, or suit has been brought against such 3rd party. The employer shall, however, have a cause of action against such 3rd party to recover any amounts paid by him for such medical treatment in like manner as provided in § 32-1535(b).

(h) When an employer and employee so agree in writing, nothing in this chapter shall be construed to prevent an employee, whose injury or disability has been established in accordance with the provisions of this chapter, from

relying in good faith, on treatment by prayer or spiritual means alone, in accordance with the tenets and practice of a recognized church or religious denomination, by a duly accredited practitioner thereof, and having nursing services appropriate therewith, without suffering loss or diminution of the compensation benefits under this chapter; provided, the employee shall submit to all physical examinations required by this chapter.

(i) The employee and employer are entitled upon request to all medical reports made pursuant to claims arising under this chapter.

(July 1, 1980, D.C. Law 3-77, § 8, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(c), 37 DCR 6890; Apr. 16, 1999, D.C. Law 12-229, § 2(d), 46 DCR 891; Apr. 24, 2007, D.C. Law 16-305, § 48(b), 53 DCR 6198.)

Section references. — This section is referred to in §§ 32-1505, 32-1519, 32-1530, 32-1535, and 32-1540.

Prior Codifications. — 1981 Ed., § 36-307.

Effect of amendments. — D.C. Law 16-305, in subsec. (c) substituted "employees with disabilities" for "disabled employees".

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 8-198. — For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 32-1542.01.

Legislative history of Law 12-229. — For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 32-241.

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 32-1501.

CASE NOTES

ANALYSIS

Agreements.
Change of physician.
Evidence.
Federal preemption.
In general.
Reimbursement.
Review.
Selection of physician.

Agreements.

Workers' compensation settlement agreement between employer and claimant who had been diagnosed with chronic fatigue syndrome was ambiguous regarding whether claimant was entitled to reimbursement for vocational rehabilitation expenses, and thus extrinsic evidence should have been admitted at administrative hearing in which claimant sought reimbursement for such expenses; agreement provided for reimbursement of chronic fatigue syndrome related medical treatment and services, vocational rehabilitation was unquestionably a "service" that could certainly be "related" to claimant's chronic fatigue syndrome, and settlement agreement did not necessarily limit claimant to the precise medical treatments and services she was receiving at the time of settlement. Hisler v. D.C. Dep't of Empl. Servs., 950 A.2d 738, 2008 D.C. App. LEXIS 272 (2008).

Change of physician.

Evidence supported finding that workers' compensation claimant had not established treating physician relationship with doctor, for purposes of workers' compensation statute and regulations that precluded claimant from switching treating physicians without permission of insurer or Office of Workers' Compensation, where claimant had only seen doctor twice, and claimant did not know at time of those visits that his injuries were work-related. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 821 A.2d 898, 2003 D.C. App. LEXIS 223 (2003).

Even if workers' compensation claimant had established treating physician relationship with doctor, within meaning of statute that precluded claimant from switching treating physicians without permission of insurer or Office of Workers' Compensation, claimant's visits to other physicians did not violate bar against switching physicians, where statute and regulations permitted limited referrals by treating physician for evaluative purposes without advance clearance. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 821 A.2d 898, 2003 D.C. App. LEXIS 223 (2003).

In workers' compensation case in which employer sought review of Department of Employment Services' (DOES) decision that it was required to pay for medical expenses from health care providers who treated claimant on referrals that it did not expressly approve, remand was required for DOES to explain its current position as to precise criteria used to determine who is attending physician, the procedures for authorizing changes to attending physician, when such procedures must be resorted to, and when referrals, consultations, and second opinions are permitted under District of Columbia Workers Compensation Act (DCWCA) without claimant's seeking such authorization. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 789 A.2d 1261, 2002 D.C. App. LEXIS 14 (2002).

The Department of Employment Services properly interpreted the Workers' Compensation Act to permit referrals by members of mayor's panel of approved physicians to nonpanel members without employer's permission; thus, claimant's treatment by doctors other than initial treating physician was not unauthorized change in physician. D.C. Code 1981, § 36-307(a, b, d). Medical Associates of Capitol Hill v. District of Columbia Dep't of Employment Services, 565 A.2d 86, 1989 D.C. App. LEXIS 208 (1989).

Seeing physician on attorney's advice did not alter fact that change of physician was contrary to workers' compensation regulations requiring employee to seek approval from insurer or Office of Workers' Compensation. King v. District of Columbia Dep't of Empl. Servs., 560 A.2d 1067, 1989 D.C. App. LEXIS 123 (1989).

Evidence.

Vocational rehabilitation program was not permanently unavailable to workers' compensation claimant, and thus evidence did not support conclusion by Director of Department of Employment Services (DOES) that claimant could not have unreasonably failed to cooperate with vocational rehabilitation efforts, where claimant's vocational rehabilitation file was closed due to claimant's failure to provide medical information or medical authorization, and there was no evidence that closing file meant that vocational rehabilitation program was permanently unavailable to claimant. Epstein, Becker & Green v. D.C. Dep't of Empl. Servs., 812 A.2d 901, 2002 D.C. App. LEXIS 742 (2002), remanded by 850 A.2d 1140, 2004 D.C. App. LEXIS 272 (D.C. 2004).

Evidence was sufficient to support order suspending payment of temporary total disability benefits on ground that workers' compensation claimant failed to participate in a vocational rehabilitation program; claimant's rehabilitation case manager testified that claimant refused to participate in the program, and thereafter, did not meet with her, despite numerous voice mail messages and letter communications, that the program did not require a physician's release because no physical exertion was required, and that claimant refused to undertake vocational assessment testing even after his primary care physician stated that he could begin vocational rehabilitation. Black v. District of Columbia Dep't of Empl. Servs., 801 A.2d 983, 2002 D.C. App. LEXIS 371 (2002).

Evidence was sufficient to support finding that workers' compensation claimant's lack of cooperation in participating in vocational rehabilitation justified suspension of benefits during the period claimant was incarcerated, given that claimant's non-cooperation and the suspension of his benefits was effective prior to the incarceration, and continued until such time as claimant began to cooperate, which never occurred, and that claimant not only failed to disclose that he was incarcerated, but lied to witnesses, his employer, and the hearing examiner about his whereabouts. Black v. District of Columbia Dep't of Empl. Servs., 801 A.2d 983, 2002 D.C. App. LEXIS 371 (2002).

In order to recover medical expenses, injured employee must show by preponderance of evidence that those expenses were caused by his work-related injury. D.C. Code 1981, § 36-301(12). Stewart v. District of Columbia Dep't of Employment Services, 606 A.2d 1350, 1992 D.C. App. LEXIS 102 (1992).

Finding that employee's testing for cardiac disease was not casually related to work-related rib injury, and thus that cost of testing was not compensable, was supported by evidence that chest pain which prompted testing was different in kind from that which had been caused by injury three years earlier, and that employee had family history of coronary disease. Stewart v. District of Columbia Dep't of Employment Services, 606 A.2d 1350, 1992 D.C. App. LEXIS 102 (1992).

In assessing weight of competing medical testimony in worker compensation cases, attending physicians are ordinarily preferred as witnesses to those doctors who have been retained to examine claimant solely for purposes of litigation. Stewart v. District of Columbia Dep't of Employment Services, 606 A.2d 1350, 1992 D.C. App. LEXIS 102 (1992).

Federal preemption.

ERISA preempted District of Columbia Workers' Compensation Equity Amendment Act section which required employers who provide health insurance for their employees to provide equivalent health insurance coverage for injured employees eligible for workers' compensation benefits; that section "related to" ERISA-covered plans, and it was immaterial that it also "related to" ERISA-exempt workers' compensation plans. Employee Retirement In-

come Security Act of 1974,§ 514(a), 29 U.S.C. § 1144(a); D.C. Code 1981, § 36-307. District of Columbia v. Greater Washington Bd. of Trade, 506 U.S. 125, 113 S. Ct. 580, 121 L. Ed. 2d 513, 1992 U.S. LEXIS 7847 (U.S.Dist.Col. 1992).

To extent that District of Columbia statute which required employers who provide health insurance for their employees to provide equivalent health insurance coverage for injured employees eligible for workers' compensation benefits was measured only by reference to "existing health insurance coverage" provided under plans that were exempt from ERISA regulation, such as "governmental" or "church" plans, ERISA did not preempt that statute. Employee Retirement Income Security Act of 1974, § 514(a), 29 U.S.C. § 1144(a); D.C. Code 1981, § 36-307. District of Columbia v. Greater Washington Bd. of Trade, 506 U.S. 125, 113 S. Ct. 580, 121 L. Ed. 2d 513, 1992 U.S. LEXIS 7847 (U.S.Dist.Col. 1992).

In general.

Causally related medical expenses are not considered "compensation" within meaning of workers' compensation statute providing that notice of any injury in respect of which "compensation" is payable shall be given to employer within 30 days after the date of such injury, and thus, claims for causally related medical expenses are not barred by the failure of the employee to give the notice required by statute. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 832 A.2d 1267, 2003 D.C. App. LEXIS 570 (2003).

Department of Employment Services' (DOES) denial of workers' compensation claimant's application for a change of physician did not present "contested case" within the meaning of Administrative Procedure Act; workers' compensation law did not require a hearing before decision whether to permit change is made. D.C. Code 1981, §§ 1-1502(8), 36-307(b)(4). Renard v. District of Columbia Dep't of Empl. Servs., 731 A.2d 413, 1999 D.C. App. LEXIS 134 (1999).

Workers' compensation claimant may only be reimbursed for medical costs associated with a designated treating physician, and though claimant is free to select a physician initially, later changes must be authorized by the employer or the Office of Workers' Compensation in order to maintain coverage. D.C. Code 1981, § 36-307(a), (b)(3), (d); D.C.Mun.Regs. title 7, § 212.12-13. Velasquez v. District of Columbia Dep't of Empl. Servs., 723 A.2d 401, 1999 D.C. App. LEXIS 18 (1999).

Fact that workers' compensation claimant is not eligible to receive disability benefits does not necessarily preclude her from receiving reimbursement of causally related medical expenses; right to medical benefits is separate and distinct from right to income benefits. D.C. Code 1981, §§ 36-307, 36-308. Davis-Dodson v. District of Columbia Dep't of Empl. Servs., 697 A.2d 1214, 1997 D.C. App. LEXIS 181 (1997).

Where employer, which had provided medical services, accepted responsibility for injury but not disability rating, employer bore no burden to schedule medical examination and failure to explain why it had not requested or obtained independent examination before informal conference did not render inapplicable statute providing for attorney fees only if employer fails to pay within 14 days of informal conference recommendation. D.C. Code 1981, §§ 36-307(e), 36-330(b). C & P Tel. Co. v. District of Columbia Dep't of Employment Servs., 638 A.2d 690, 1994 D.C. App. LEXIS 38 (1994).

Department of Employment Services appropriately interpreted Workers' Compensation Act to permit claimant's recovery from employer of medical bills of physicians who were not members of the mayor's panel of approved physicians, but to whom claimants had been referred by panel physician. D.C. Code 1981,§ 36-307(a, b). Medical Associates of Capitol Hill v. District of Columbia Dep't of Employment Services, 565 A.2d 86, 1989 D.C. App. LEXIS 208 (1989).

The Department of Employment Services appropriately interpreted Workers' Compensation Act to permit claimant to recover from employer expenses of chiropractor to whom claimant had been referred by physician who was member of mayor's panel of approved physicians. Medical Associates of Capitol Hill v. District of Columbia Dep't of Employment Services, 565 A.2d 86, 1989 D.C. App. LEXIS 208 (1989).

Physician's bill, procedure ordered by physician, and surgery recommended by physician could not be paid by workers' compensation, where physician either was unauthorized, nonpanel physician or was seen by employee without approval of insurer or Office of Workers' Compensation. King v. District of Columbia Dep't of Empl. Servs., 560 A.2d 1067, 1989 D.C. App. LEXIS 123 (1989).

Worker was not entitled to payment of continuing medical treatment expenses resulting from original work-related back injury since issue was resolved in prior final order denying worker's claim for further workers' compensation benefits, and to extent that worker's claim rested on principles of estoppel flowing from promises made by insurer, recovery was outside structure of Workers' Compensation Act. D.C. Code 1981, §§ 36-301 to 36-344. Snipes v. District of Columbia Dep't of Employment Services, 542 A.2d 832, 1988 D.C. App. LEXIS 87 (1988).

Reimbursement.

Workers' compensation claimant, who entered into settlement with employer entitling

her to reimbursement for chronic fatigue syndrome related medical treatment and services for a period of five years after the settlement was approved, was not entitled to reimbursement for expenses incurred in megavitamin transfusions; though claimant's physician recommended the transfusions, utilization review performed by independent expert concluded that megavitamin transfusions were not supported by the literature and had not been proven to be of value, and once the utilization review was completed the report was decisive on the issue of reasonableness and necessity of medical services unless specific reasons were articulated why it should not be decisive. Hisler v. D.C. Dep't of Empl. Servs., 950 A.2d 738, 2008 D.C. App. LEXIS 272 (2008).

Review.

Appropriateness of any medical care furnished, or scheduled to be furnished, to an employee through workers' compensation may be reviewed under statutory utilization review (UR) procedures. Children's Nat'l Med. Ctr. v. D.C. Dep't of Empl. Servs., 992 A.2d 403, 2010 D.C. App. LEXIS 149 (2010).

Selection of physician.

The law of the District of Columbia prefers the opinion of a treating physician over that of a "non-treating physician, in a workers' compensation case, that is, a doctor who has been retained to examine the claimant solely for the purposes of litigation; this preference is applied because the treating physician was not involved solely for the purposes of litigation and thus perhaps is less apt, even if subconsciously, to be biased, and because of the typically greater amount of time the treating doctor has worked with the patient. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 985 A.2d 431, 2009 D.C. App. LEXIS 642 (2009).

Substantial evidence supported finding that workers' compensation claimant chose physician as her treating physician; claimant discussed her rights with employer's nurse and selected employer's health provider to treat her injury, she had a follow up visit with physician, and she had scheduled a follow-up visit with physician but later cancelled the appointment to consult with a physician her lawyer had referred her to. Wiley v. D.C. Dep't of Empl. Servs., 984 A.2d 201, 2009 D.C. App. LEXIS 607 (2009).

Contention of workers' compensation claimant that her expert neuropsychologist was her treating physician was without merit, where claimant never received approval from her employer or the Office of Workers' Compensation. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Claimant's accepting a referral from an emergency room does not constitute a choice of physicians under workers' compensation law. Velasquez v. District of Columbia Dep't of Empl. Servs., 723 A.2d 401, 1999 D.C. App. LEXIS 18 (1999).

Injured worker's acceptance of reasonable follow-up care following visit to emergency room does not automatically constitute "selection of physician," for workers' compensation purposes. D.C. Code 1981, § 36-307(b)(3). Ceco Steel, Inc. v. District of Columbia Dep't of Employment Services, 566 A.2d 1062, 1989 D.C. App. LEXIS 274 (1989).

Decision that injured worker did not "constructively select" physician to whom he was referred for follow-up care following visit to hospital emergency room was reasonable and in accordance with law, so that worker did not have to obtain compensation carrier's consent prior to obtaining treatment from other physician, where worker visited first physician on only three occasions within three weeks of visit to emergency room, and visits all occurred at hospital clinic and not at private clinic or office. D.C. Code 1981, § 36-307(b)(3). Ceco Steel, Inc. v. District of Columbia Dep't of Employment Services, 566 A.2d 1062, 1989 D.C. App. LEXIS 274 (1989).

§ 32-1508. Compensation for disability.

Compensation for disability shall be paid to the employee as follows:

(1) In case of total disability adjudged to be permanent, 66⅔% of the employee's average weekly wages shall be paid to the employee during the continuance thereof. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any 2 thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined only if, as a result of the injury, the employee is unable to earn any wages in the same or other employment;

(2) In case of disability total in character but temporary in quality, 66⅔% of the employee's average weekly wages shall be paid to the employee during the continuance thereof;

(3) In case of disability partial in character but permanent in quality, the compensation shall be 66⅔% of the employee's average weekly wages which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with paragraph (2) or (4) of this subsection respectively, and shall be paid to the employee, as follows:

(A) Arm lost, 312 weeks' compensation;

(B) Leg lost, 288 weeks' compensation;

(C) Hand lost, 244 weeks' compensation;

(D) Foot lost, 205 weeks' compensation;

(E) Eye lost, 160 weeks' compensation;

(F) Thumb lost, 75 weeks' compensation;

(G) First finger lost, 46 weeks' compensation;

(H) Great toe lost, 38 weeks' compensation;

(I) Second finger lost, 30 weeks' compensation;

(J) Third finger lost, 25 weeks' compensation;

(K) Toe other than great toe lost, 16 weeks' compensation;

(L) Fourth finger lost, 15 weeks' compensation;

(M) Compensation for loss of hearing of 1 ear, 52 weeks. Compensation for loss of hearing of both ears, 200 weeks, provided that the Mayor may establish a waiting period, not to exceed 6 months, during which an employee may not file a claim for loss of hearing resulting from nontraumatic causes in his occupational environment until the employee has been away from such environment for such period, and provided further, that nothing in this subparagraph shall limit an employee's right to file a claim for temporary partial disability pursuant to paragraph (5) of this section;

(N) Compensation for loss of more than 1 phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the 1st phalange shall be one half of the compensation for loss of the entire digit;

(O) Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for a loss of the arm or leg; but if amputated between the elbow and the wrist or the knee and the ankle, shall be the same as for loss of a hand or foot;

(P) Compensation for loss of binocular vision or for 80% or more of the vision of an eye shall be the same as for loss of the eye;

(Q) Compensation for loss of 2 or more digits, or 1 or more phalanges of 2 or more digits, of a hand or foot, may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot;

(R) Compensation for permanent total loss of use of a member shall be the same as for loss of the member;

(S) Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member. Benefits for partial loss of vision in 1 or both eyes, or partial loss of hearing in 1 or both ears shall be for a period proportionate to the period benefits are payable for total bilateral loss of vision or total binaural loss of hearing as such partial loss bears to total loss;

(T) The Mayor shall award proper and equitable compensation for

serious disfigurement of the face, head, neck or other normally exposed bodily areas not to exceed $7,500;

(U) In any case in which there shall be a loss of, or loss of use of, more than 1 member or parts of more than 1 member set forth in subparagraphs (A) to (S) of this paragraph, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or part thereof, which awards shall run consecutively, except that where 1 injury affects only 2 or more digits of the same hand or foot, subparagraph (Q) of this paragraph shall apply; and

(U-i) In determining disability pursuant to subparagraphs (A) through (S) of this subsection, the most recent edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* may be utilized, along with the following 5 factors:

(i) Pain;

(ii) Weakness;

(iii) Atrophy;

(iv) Loss of endurance; and

(v) Loss of function.

(V)(i) In other cases the employee shall elect:

(I) To have his or her compensation calculated in accordance with the formula set forth in either sub-subparagraph (ii)(I) or (II) of this subparagraph; and

(II) To receive the compensation at the time the employee returns to work or achieves maximum medical improvement.

(ii) The compensation shall be 66⅔% of the greater of:

(I) The difference between the employee's actual wage at the time of injury and the average weekly wage, at the time of injury, of the job that the employee holds after the employee has a disability; or

(II) The difference between the average weekly wage, at the time the employee returns to work, of the job that the employee held before the employee had the disability and the actual wage of the job that the employee holds when the employee returns to work.

(iii) If the employee voluntarily limits his or her income or fails to accept employment commensurate with the employee's abilities, the employee's wages after the employee becomes disabled shall be deemed to be the amount the employee would earn if the employee did not voluntarily limit his or her income or did accept employment commensurate with the employee's abilities. Notwithstanding the provisions of this section, in the case of injury occurring on or after April 16, 1999, the periods of compensation set forth in subparagraphs (A) through (S) of this paragraph shall each be reduced by a proportion of 25% of the stated period of weeks, rounded upward to the nearest whole week.

(W) The compensation and remuneration payable to a professional athlete claimant pursuant to subparagraph (V)(ii) of this paragraph shall be determined by referring to the date of the claimant's disability and a date that is not later than the date on which the claimant's employment as a professional athlete would have ended, as determined pursuant to § 32-1501(17C), if the

disability for which he or she seeks compensation and remuneration pursuant to subparagraph (V)(ii) of this paragraph had not occurred.

(4) Any compensation to which any claimant would be entitled under paragraph (3) of this section, excepting paragraph (3)(V) of this section, shall, provided the death arises from causes other than the injury, be payable in full to and for the benefit of the persons following:

(A) If there be a surviving spouse or domestic partner and no child of the deceased to such spouse or domestic partner;

(B) If there be a surviving spouse or domestic partner and surviving child or children of the deceased, one half shall be payable to the spouse or domestic partner and the other one half to the surviving child or children;

(C) The Mayor may in his discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child. In the absence of such a requirement, the appointment for such a purpose shall not be necessary;

(D) If there be a surviving child or children of the deceased but no surviving spouse or domestic partner, then to such child or children;

(E) If there be no surviving spouse or domestic partner and no surviving children, such unpaid amount of the award shall be paid to the survivors specified in § 32-1509 (other than a spouse, domestic partner, or child); and the amount to be paid each such survivor shall be determined by multiplying such unpaid amount of the award by the appropriate percentage specified in § 32-1509(4), but if the aggregate amount to which all such survivors are entitled, as so determined, is less than such unpaid amount of the award, the excess amount shall be divided among such survivors pro rata according to the amount otherwise payable to each.

(5) In case of temporary partial disability, the compensation shall be 66⅔% of the injured employee's wage loss to be paid during the continuance of such disability, but shall not be paid for a period exceeding 5 years. Wage loss shall be the difference between the employee's average weekly wage before the employee had the disability and the employee's actual wages after the employee had the disability. If the employee voluntarily limits his income or fails to accept employment commensurate with his abilities, then his wages after the employee had the disability shall be deemed to be the amount he would earn if he did not voluntarily limit his income or did accept employment commensurate with his abilities.

(6)(A) If an employee receives an injury, which combined with a previous occupational or nonoccupational disability or physical impairment causes substantially greater disability or death, the liability of the employer shall be as if the subsequent injury alone caused the subsequent amount of disability and shall be the payment of:

(i) All medical expenses;

(ii) All monetary benefits for temporary total or partial injuries; and

(iii) Monetary benefits for permanent total or partial injuries up to 104 weeks.

(B) The special fund shall reimburse the employer solely for the monetary benefits paid for permanent total or partial injuries after 104 weeks.

(C) The requirements of this paragraph shall apply to injuries occurring prior to April 16, 1999.

(7) In each case, payment of benefits shall be 66⅔% of the employee's average weekly wage.

(8) The Mayor may approve lump-sum settlements agreed to in writing by the interested parties, discharging the liability of the employer for compensation, notwithstanding §§ 32-1516 and 32-1517, in any case where the Mayor determines that it is in the best interest of an injured employee entitled to compensation or individuals entitled to benefits pursuant to § 32-1509. The Mayor shall approve the settlement, where both parties are represented by legal counsel who are eligible to receive attorney fees pursuant to § 32-1530. These settlements shall be the complete and final dispositions of a case and shall be a final binding compensation order.

(9) Repealed.

(10) An award for disability may be made after the death of an injured employee from causes other than work-related injury. If the award made is for permanent partial disability, pursuant to paragraph (3)(A) through (U) of this section, the award shall be payable in full pursuant to paragraph (4) of this section. If the award made is for any other category of disability, the amount of the award shall be computed from the date of the injury to the date of death, and shall be payable in full in the same manner as an award payable pursuant to paragraph (4) of this section.

(July 1, 1980, D.C. Law 3-77, § 9, 27 DCR 2503; May 10, 1989, D.C. Law 7-231, § 44, 36 DCR 492; Mar. 6, 1991, D.C. Law 8-198, § 2(d), 37 DCR 6890; Apr. 16, 1999, D.C. Law 12-229, § 2(e), 46 DCR 891; Oct. 14, 1999, D.C. Law 13-49, § 12(b), 46 DCR 5153; Apr. 24, 2007, D.C. Law 16-305, § 48(c), 53 DCR 6198; Sept. 12, 2008, D.C. Law 17-231, § 31(d), 55 DCR 6758.)

Section references. — This section is referred to in §§ 32-1501, 32-1524, and 32-1540.

Prior Codifications. — 1981 Ed., § 36-308.

Effect of amendments. — D.C. Law 13-49 made a clarifying technical amendment.

D.C. Law 16-305, in par. (3)(V)(ii), substituted "has a disability" for "becomes disabled" and "had the disability" for "became disabled"; and in par. (5), substituted "the employee had the disability" for "becoming disabled".

D.C. Law 17-231, in par. (4), substituted "spouse or domestic partner" for "widow or widower"; and, in par. (4)(E), substituted "surviving spouse or domestic partner" for "surviving spouse" and substituted "spouse, domestic partner, or child" for "wife, husband, or child".

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-198. — For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 32-1542.01.

Legislative history of Law 12-229. — For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 13-49. — For Law 13-49, see notes following § 32-1501.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 32-241.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 32-408.

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 32-1501.

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Aggravation of preexisting condition.

— Aggravation or acceleration of disease or conditions, aggravation of preexisting condition.

Employee's angina was "causally related" to his employment, where pains were greatly exacerbated by his work and abated when he was not working. Crum v. General Adjustment Bureau, 738 F.2d 474, 1984 U.S. App. LEXIS 20779 (C.A.D.C. 1984).

Employer was responsible for claimant's temporary total disability due to asthmatic condition which had been aggravated by his exposure to dust and fumes in course of his employment as construction laborer in tunnel for subway system. Champion v. S&M Traylor Bros., 690 F.2d 285, 1982 U.S. App. LEXIS 24956 (C.A.D.C. 1982).

Under Longshoremen's and Harbor Workers' Compensation Act, an employer is liable for consequences of a work-related injury which aggravates a preexisting condition. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-51 as amended 33 U.S.C. §§ 901-950. Directors, Office of Workers' Compensation Programs, etc. v. Brandt Airflex Corp., 645 F.2d 1053, 1981 U.S. App. LEXIS 19847 (C.A.D.C. 1981).

Where worker awoke in early morning, after occasion of alleged accident, with severe pains in neck, shoulders and arms, and was taken to hospital, and heart attack was originally suspected but it was concluded that his discomfort was due to exacerbation of his arthritic condition, he suffered "injury" within Longshoremen's and Harbor Workers' Compensation Act. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 2(2), 3, 20(a) as amended 33 U.S.C. §§ 901 et seq., 902(2), 903, 920(a); D.C. Code §§ 36-501, 36-502. Riley v. U. S. Industries/Federal Sheet Metal, Inc., 627 F.2d 455, 1980 U.S. App. LEXIS 17331 (C.A.D.C. 1980), reversed by 455 U.S. 608, 102 S. Ct. 1312, 71 L. Ed. 2d 495, 1982 U.S. LEXIS 30, 50 U.S.L.W. 4295 (1982).

That an employee is diseased does not bar his right to recover compensation for an accidental injury. Longshoremen's and Harbor Workers' Compensation Act, Sec. 1 et seq., 33 U.S.C. 901 et seq., D.C. Code 1940, Secs. 36-501, 36-502, 33 U.S.C. 901 note. Great Atlantic & Pacific Tea Co. v. Cardillo, 127 F.2d 334, 1942 U.S. App. LEXIS 4759 (1942).

Where uncontradicted evidence of physicians showed that deceased employee had suffered advanced stage of heart disease, advanced stage of Bright's disease, that his liver was

cirrhotic, and that acute dilatation of the heart, from which he died, could have been caused by the slightest exertion, compensation award held not authorized, since there was no direct causal connection between death resulting from the disease and the employment. Longshoremen's & Harbor Workers' Compensation Act as amended, 33 U.S.C. § 901 et seq.; D.C. Code 1929, T. 19, §§ 11, 12. Hoage v. Liberty Mut. Ins. Co., 78 F.2d 874, 1935 U.S. App. LEXIS 3892 (1935).

There was substantial evidence to support administrative law judge's (ALJ) finding that the workplace injury to workers' compensation claimant's knee was medically causally related to her current disability; doctor noted the claimant's report that both knees had been doing "somewhat better" before the work accident, he testified that for a year following the injections claimant had not complained of her left knee, but that he had been attempting to manage pain in her right knee since the accident, and claimant also testified that her knee had gotten worse after the accident, and because the course of treatment for the two knees had been similar before the accident, doctor's opinion that the injury had significantly accelerated claimant's need for replacement of her right knee was not illogical. Children's Nat'l Med. Ctr. v. D.C. Dep't of Empl. Servs., 992 A.2d 403, 2010 D.C. App. LEXIS 149 (2010).

If recurrence of worker's medical condition results from work-related trauma or event, then it constitutes compensable aggravation of prior condition under Workers' Compensation Act. D.C. Code 1981, § 36-301 et seq. Harris v. District of Columbia Office of Worker's Compensation, 660 A.2d 404, 1995 D.C. App. LEXIS 135 (1995).

Emotional injuries which result from aggravation of an existing condition may be compensable under Workers' Compensation Act. D.C. Code 1981, §§ 36-301 to 36-345. Sturgis v. District of Columbia Dep't of Employment Servs., 629 A.2d 547, 1993 D.C. App. LEXIS 188 (1993).

Objective standard is used to determine compensability, under Workers' Compensation Act, of emotional injuries which result from aggravation of an existing condition. D.C. Code 1981, § 36-301(12). Sturgis v. District of Columbia Dep't of Employment Servs., 629 A.2d 547, 1993 D.C. App. LEXIS 188 (1993).

— In general.

Aggravation of pre-existing condition may constitute compensable accidental injury under Longshoremen's and Harbor Workers' Compensation Act. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-50, 21(b) as amended 33 U.S.C. §§ 901-950, 921(b); D.C. Code § 36-501. Wheatley v. Adler, 407 F.2d 307, 1968 U.S. App. LEXIS 6912 (C.A.D.C. 1968).

Where deputy commissioner originally awarded compensation for temporary total disability, stipulated intermediate order finding temporary partial disability was made subject to deputy's right of review when claimant's condition might change, and compensation was paid after a second injury within less than one year of claim based on total disability, even if original award was suspended during reemployment of claimant, and claimant became only partially disabled, that classification did not prejudice claimant's rights to recover for total disability resulting from second injury. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., and §§ 8(e), 22, 33 U.S.C. § 901 et seq., and §§ 908(e), 922, D.C. Code 1940, §§ 36-501, 36-502, 33 U.S.C. § 901 note. Great Atlantic & Pacific Tea Co. v. Cardillo, 127 F.2d 334, 1942 U.S. App. LEXIS 4759 (1942).

A disability resulting from the aggravation of a pre-existing condition is compensable under the Workers' Compensation Act; it is immaterial that other factors unrelated to the employee's work duties, may have contributed in some way to the aggravation of employee's condition, as compensation is warranted so long as employee's disability arose, in part, from his work-related activities. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 827 A.2d 35, 2003 D.C. App. LEXIS 422 (2003).

A disability resulting from the aggravation of a pre-existing condition is compensable. Waugh v. D.C. Dep't of Empl. Servs., 786 A.2d 595, 2001 D.C. App. LEXIS 252 (2001).

Disability resulting from aggravation of pre-existing condition is compensable under workers' compensation law. Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 744 A.2d 992, 2000 D.C. App. LEXIS 5 (2000).

Aggravation of preexisting condition may constitute a compensable accidental injury under Workers' Compensation Act, and fact that other, nonemployment-related factors may also have contributed to, or additionally aggravated claimant's malady, does not affect claimant's right to compensation under the aggravation rule. D.C. Code 1981, § 36-308(6)(A). King v. District of Columbia Dep't of Empl. Servs., 742 A.2d 460, 1999 D.C. App. LEXIS 285 (1999).

Under "aggravation rule," the aggravation of a pre-existing condition may justify workers' compensation. Washington Vista Hotel v. Department of Empl. Servs., 721 A.2d 574, 1998 D.C. App. LEXIS 218 (1998).

Under "aggravation rule," it is not enough simply to prove a pre-existing condition to justify workers' compensation; instead, there must be at least some evidence of aggravation before the rule may be invoked. Washington Vista Hotel v. Department of Empl. Servs., 721 A.2d 574, 1998 D.C. App. LEXIS 218 (1998).

Aggravation of preexisting condition may constitute compensable accidental injury under Workers' Compensation Act. D.C. Code 1981, § 36-301 et seq. Metropolitan Poultry v. District of Columbia Dep't of Empl. Servs., 706 A.2d 33, 1998 D.C. App. LEXIS 24 (1998).

Aggravation of preexisting condition and repeated trauma which contribute to disability may constitute compensable injury under Workers' Compensation Act. D.C. Code 1981, § 36-301 et seq. Brown v. District of Columbia Dep't of Empl. Servs., 700 A.2d 787, 1997 D.C. App. LEXIS 229 (1997).

Subsequent injury, whether aggravation of original injury or new and distinct injury, is compensable in workers' compensation if it is direct and natural result of compensable primary injury. D.C. Code 1981, § 36-301 et seq. Brown v. District of Columbia Dep't of Empl. Servs., 700 A.2d 787, 1997 D.C. App. LEXIS 229 (1997).

— Injury and pre-existing disease as dual contributing causes, aggravation of preexisting condition.

Prior diseased condition of employee does not prevent recovery of compensation, though injury would not have occurred but for diseased condition. Hoage v. Employers' Liability Assur. Corporation, 64 F.2d 715, 1933 U.S. App. LEXIS 4202 (1933).

If an employee experiences a work-related injury which, combined with a previous disability or physical impairment, causes substantially greater disability or death, the liability of the employer shall be as if the subsequent injury alone caused the subsequent amount of disability. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

Workers' compensation claimant was not entitled to medical benefits for payment of thyroid tests, where hearing examiner specifically found that medical responses that were incurred as a result of claimant's neck injury from her airport shuttle bus accident was to be covered by a settlement award from a no-fault claim against the owner of the shuttle bus. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

— Nonemployment related factors, aggravation of preexisting condition.

Disability resulting from the aggravation of a pre-existing condition is compensable under the Workers' Compensation Act; this is true even where non-employment factors contributed to claimant's malady. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

In determining extent of disability, workers' compensation claimant was entitled to have previous nonoccupational injury, as well as current occupational injury, taken into account. Wooten v. D.C. Dep't of Empl. Servs., 785 A.2d 657, 2001 D.C. App. LEXIS 235 (2001).

Fact that other, nonemployment related factors may have contributed to, or additionally aggravated malady, does not affect workers' compensation claimant's right to compensation under rule that aggravation of preexisting injury may be compensable. D.C. Code 1981, § 36-301 et seq. Brown v. District of Columbia Dep't of Empl. Servs., 700 A.2d 787, 1997 D.C. App. LEXIS 229 (1997).

Authority of department.

As the agency recognized as having special competence to decide matters within its expertise, the Department of Employment Services is entrusted in the first instance with responsibility to interpret the Workers' Compensation Act. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

Department of Employment Services (DOES) has the power to approve workers' compensation settlement agreements and nothing in the provision limits that authority to cases where there is a guarantee of prompt reimbursement from an insurance carrier. Hisler v. D.C. Dep't of Empl. Servs., 950 A.2d 738, 2008 D.C. App. LEXIS 272 (2008).

Basis for determining amount of compensation—In general.

Compensation Review Board's conclusion that the compensation rate for workers' compensation claimant, who was temporarily totally disabled, should be his actual average weekly rate at the time he incurred his injury was legally erroneous; Workers' Compensation Act clearly stated, without exception, that in case of disability total in character, but temporary in quality, 66 ⅔% of the employee's average weekly wages shall be paid, and there was no provision in the Act from which the Board's interpretation could reasonably arise. Hiligh v. D.C. Dep't of Empl. Servs., 935 A.2d 1070, 2007 D.C. App. LEXIS 655 (2007).

Payments made by employer to taxicab company to provide for workers' compensation claimant's transportation to and from work after injury would not be included in determining postinjury wages, for purposes of determining benefits due, as payments to taxicab company were in nature of reimbursements rather than true economic benefits to claimant. D.C. Code 1981, § 36-301(19). Mason v. District of Columbia Dep't of Employment Services, 562 A.2d 644, 1989 D.C. App. LEXIS 152 (1989).

In computing wages, for workers' compensation purposes, ultimate objective is to ascertain true economic benefit to claimant, with it being generally recognized that not only wages and salary are included in computations, but other things of value received in consideration for work such as commissions. D.C. Code 1981, § 36-301(19). Mason v. District of Columbia Dep't of Employment Services, 562 A.2d 644, 1989 D.C. App. LEXIS 152 (1989).

Wages shown on amended tax returns may be used in calculating workers' compensation benefits. D.C. Code 1981, § 36-311(b). Washington Metropolitan Area Transit Authority v. District of Columbia Dep't of Employment Services, 515 A.2d 740, 1986 D.C. App. LEXIS 449 (1986).

Wages from all jobs held at time of on-the-job accident may be combined in computing workers' compensation benefits. Washington Metropolitan Area Transit Authority v. District of Columbia Dep't of Employment Services, 515 A.2d 740, 1986 D.C. App. LEXIS 449 (1986).

— Impairment of earning capacity, basis for determining amount of compensation.

Under District of Columbia Workmen's Compensation Act, basis for computing benefits attributable to employee's second injury, which caused change in status from permanent-partial to permanent-total disability, would be employee's earning capacity during time preceding the second injury rather than employee's earning capacity prior to first injury. Longshoremen's and Harbor Workers' Compensation Act, § 8(a) as amended 33 U.S.C. § 908(a). Hastings v. Earth Satellite Corp., 628 F.2d 85, 1980 U.S. App. LEXIS 19531 (C.A.D.C. 1980), writ of certiorari denied by 449 U.S. 905, 101 S. Ct. 281, 66 L. Ed. 2d 137, 1980 U.S. LEXIS 3551, 49 U.S.L.W. 3270 (1980).

In determining impaired annual earning capacity of an injured employee under the Longshoremen's and Harbor Workers' Compensation Act as made applicable to the District of Columbia, "general earnings" are not restricted to employments or types of employment but rather extend to individual earnings. Longshoremen's and Harbor Workers' Compensation Act, § 10(a-c), 33 U.S.C. § 910(a-c), D.C. Code 1951, § 36-501, 33 U.S.C. § 901 note. Liberty Mut. Ins. Co. v. Britton, 233 F.2d 699, 1956 U.S. App. LEXIS 4757 (C.A.D.C. 1956).

In awarding workmen's compensation based on impaired capacity to earn, previous earnings from a job other than the one in which the injury was sustained were properly considered along with previous earnings of the injured employee in the employment in which he was working at the time of the injury, even though the job at which employee was injured was full year-round employment. Longshoremen's and Harbor Workers' Compensation Act, § 10(a-c), 33 U.S.C. § 910(a-c), D.C. Code 1951, § 36-501, 33 U.S.C. § 901 note. Liberty Mut. Ins. Co. v. Britton, 233 F.2d 699, 1956 U.S. App. LEXIS 4757 (C.A.D.C. 1956).

Any injury that does not result in a loss of wage-earning capacity cannot be the foundation for a finding of disability in a proceeding for workers' compensation benefits. Wash. Post v. D.C. Dep't of Empl. Servs., 853 A.2d 704, 2004 D.C. App. LEXIS 372 (2004).

Termination from employment, whether related or unrelated to a work injury, does not sever the causal link between injury and wage loss. Upchurch v. D.C. Dep't of Empl. Servs., 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

For a claimant to receive a worker's compensation award for a permanent loss of earnings, due to a disability partial in character but permanent in quality, that is not a result of a schedule injury, a claimant must suffer an actual loss of wages. D.C. Code 1981, § 36-308(3)(V)(ii). Harris v. District of Columbia Dep't of Empl. Servs., 746 A.2d 297, 2000 D.C. App. LEXIS 27 (2000).

Workers' Compensation Act (WCA) schedule award provisions permit wage loss award for disability listed in schedule even if disability was caused by injury to nonschedule part of body. D.C. Code 1981, § 36-308(3). Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 683 A.2d 470, 1996 D.C. App. LEXIS 214 (1996).

Amount of workers' compensation claimant's wage loss was properly computed as difference between average weekly preinjury wage and postinjury wage, rather than by reference to wage loss based on what claimant's income would have been, absent injury, at time of her maximum medical improvement. D.C. Code 1981,§§ 36-301(8), 36-308(3)(V), (5), 36-311(a). Mason v. District of Columbia Dep't of Employment Services, 562 A.2d 644, 1989 D.C. App. LEXIS 152 (1989).

— Pain and suffering, basis for determining amount of compensation.

Claim for workers' compensation benefits was improperly denied as being based on misinterpretation of law that award could not be based solely on pain. D.C. Code 1981, § 36-301(8). Murrell v. District of Columbia Dep't of Empl. Servs., 697 A.2d 40, 1997 D.C. App. LEXIS 146 (1997).

Construction and application.

Determination of employer's payments of workers' compensation benefits to retired claimant under version of Workers' Compensation Act in effect at time of claimant's retirement, rather than under version of Act in effect at time of claimant's injury, was not improper

retrospective application of legislation, as claimant's retirement benefits remained uncertain until the date of her retirement. Giant Food, Inc. v. D.C. Dep't of Empl. Servs., 934 A.2d 921, 2007 D.C. App. LEXIS 645 (2007).

Falls.

That fall causing newspaper solicitor's death from fractured skull might have been caused in part by diseased condition of employee would not render death noncompensable. Longshoremen's and Harbor Workers' Compensation Act, § 2(2), 33 U.S.C. § 902(2); D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. New Amsterdam Casualty Co. v. Hoage, 62 F.2d 468, 1932 U.S. App. LEXIS 3205 (1932).

In general.

Disability is an economic and not a medical concept, under workers' compensation statute governing compensation for disability. D.C. Code 1981,§ 36-308. Harris v. District of Columbia Dep't of Empl. Servs., 746 A.2d 297, 2000 D.C. App. LEXIS 27 (2000).

In general, except in the case of a "schedule" injury enumerated in statute, a continuing injury that does not result in any loss of wage earning capacity cannot be the foundation for a finding of disability. Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs., 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

Deciding extent of workers' compensation claimant's disability has both procedural and substantive component. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

The Workers' Compensation Act is a wage loss statute, and disability means injury that results in wage loss. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Disability is economic concept for purposes of workers' compensation insurance, and thus its existence depends on realities of marketplace. D.C. Code 1981,§ 36-308(2). Washington Post v. District of Columbia Dep't of Empl. Servs., 675 A.2d 37, 1996 D.C. App. LEXIS 69 (1996).

Injuries to heart and vessels.

For purposes of workmen's compensation award, it makes no difference that decedent employee was exposed to no more than ordinary hazards of working and living at time he sustained fatal heart attack or that same kind of injury might have occurred wherever he might have been. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-50 as amended 33 U.S.C. §§ 901-950; D.C. Code § 36-501. Wheatley v. Adler, 407 F.2d 307, 1968 U.S. App. LEXIS 6912 (C.A.D.C. 1968).

Death of employee, who worked in mailing department of magazine publisher and who suffered from angina pectoris and whose work involved dragging heavy mail bags about 25 feet, "arose out of and in the course of his employment" and was due to "an accidental injury" within the meaning of Longshoremen's and Harbor Workers' Compensation Act. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 20, 33 U.S.C. §§ 901 et seq., 920; D.C. Code 1961, § 36-501. Hancock v. Einbinder, 310 F.2d 872, 1962 U.S. App. LEXIS 3642 (C.A.D.C. 1962).

For workers' compensation claimant to establish that rupture of berry aneurysm arose out of his employment, claimant was not required to prove that rupture was precipitated by unusual exertion where claimant was engaged at or near time of injury in job-related activities both stressful in themselves and made more so by immediate circumstances. D.C. Code 1981, § 36-301(12). Capital Hilton Hotel v. District of Columbia Dep't of Employment Services, 565 A.2d 981, 1989 D.C. App. LEXIS 222 (1989).

Heart attack attributable to emotional stress resulting from suspension and potential discharge, could have been "accidental injury," compensable by workers' compensation. D.C. Code 1981, § 36-301(12). Jones v. District of Columbia Dep't of Employment Services, 519 A.2d 704, 1987 D.C. App. LEXIS 272 (1987).

Judicial review.

Conclusion of administrative law judge (ALJ) that workers' compensation claimant failed to prove the existence of a permanent 20% left-leg disability was not arbitrary, capricious, or contrary to law, even though employer did not present a medical expert; opinion letter of claimant's treating physician was cryptic and conclusory, and the record provided a substantial basis for questioning its reliability. Golding-Alleyne v. D.C. Dep't of Empl. Servs., 980 A.2d 1209, 2009 D.C. App. LEXIS 474 (2009).

Task of Court of Appeals in reviewing workers' compensation case is not to finely parse reasons given by finder of fact for accepting one set of expert opinions rather than another. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 821 A.2d 898, 2003 D.C. App. LEXIS 223 (2003).

Using wage stacking to determine average weekly wage of workers' compensation claimant injured while working part-time job as security guard to compute claimant's total disability benefit but not using wage stacking when calculating claimant's permanent partial disability benefits was plain error in absence of clearly expressed rational for decision by Department of Employment Services examiner; further explanation by agency was required. D.C. Code 1981, §§ 36-301 to 36-345. DeShazo v. District of Columbia Dep't of Employment Servs., 638 A.2d 1152, 1994 D.C. App. LEXIS 34 (1994).

Limitation of actions.

Lump-sum settlement of claim of workers'

compensation claimant was an "award in a compensation order" triggering six-month statute of limitations within which claimant was required to file action against alleged third party tortfeasor; settlement agreement expressly listed claimant's medical bills from accident and noted total amount for lost wages, parties incorporated those sums in the negotiation for settlement, thereafter, and office of workers' compensation approved settlement in a compensation order approval of lump-sum settlement, which, pursuant to statute, was the complete and final disposition of case and a final binding compensation order. Biratu v. BT Vt. Ave., LLC, 962 A.2d 261, 2008 D.C. App. LEXIS 482 (2008).

Limits on disability compensation.

Workers' compensation benefits are subject to reduction on account of payments received from a union pension or other employee benefit plan subject to ERISA only if that plan was solely funded by the employer. Mushroom Transp. v. District of Columbia Dep't of Empl. Servs., 761 A.2d 840, 2000 D.C. App. LEXIS 250 (2000).

Workers' compensation benefits were not subject to reduction on account of payments claimant received from union pension fund that was subject to ERISA, where fund was not solely funded by employer. Mushroom Transp. v. District of Columbia Dep't of Empl. Servs., 761 A.2d 840, 2000 D.C. App. LEXIS 250 (2000).

Employer's retirement plan was not "solely funded by employer" within meaning of workers' compensation statute providing that in no event shall the total money allowance payable to employee as compensation for injury and from income maintenance plans solely funded by employer exceed in the aggregate the higher of 80% of employee's average weekly wage; pool of money employer utilized to meet its pension obligations included the 26 years of claimant's contributions, as well as those of other employees. D.C. Code 1981, § 36-308(9) (1998). Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 731 A.2d 845, 1999 D.C. App. LEXIS 135 (1999).

Employer was not entitled to credit life insurance proceeds received by police officer's widow against its obligation to pay widow death benefits; workers' compensation statute providing that in no event shall the total money allowance payable to an employee or his dependent survivors as federal old age and survivors insurance benefits exceed the higher of 80% of the employee's average weekly wage or the total of federal payments and employee benefit plan payments did not embrace private life insurance proceeds. D.C. Code 1981, § 36-308(9). Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 716 A.2d 976, 1998 D.C. App. LEXIS 137 (1998).

Modification of compensation.

Mere fact that claimant had not proffered any applicable case law or provision in the Workers' Compensation Act which prohibited issuing credit for overpayment of temporary total disability (TTD) benefits against any future wage loss benefit award was insufficient reason for granting employer the credit for TTD overpayments, where agency was neither expressly allowed nor expressly forbidden from granting credit against subsequent awards by the governing statute. Black v. District of Columbia Dep't of Empl. Servs., 801 A.2d 983, 2002 D.C. App. LEXIS 371 (2002).

Original workers' compensation order that ruled claimant was not entitled to a schedule award for a permanent partial disability to her leg was manifest error, and thus, res judicata did not preclude claimant from seeking a modification of that order, where claimant's physician attributed a 15 percent disability rating to claimant's knee and ankle. Walden v. District of Columbia Dep't of Empl. Servs., 759 A.2d 186, 2000 D.C. App. LEXIS 217 (2000).

Claimant made requisite threshold showing of a change in her condition, so as to be entitled to hearing on request for modification of original workers' compensation order that ruled she was not entitled to a schedule award for a permanent partial disability to her leg, where claimant offered a doctor's medical report indicating the presence of new symptoms in her knee and ankle and a significant increase in the extent of her disability. Walden v. District of Columbia Dep't of Empl. Servs., 759 A.2d 186, 2000 D.C. App. LEXIS 217 (2000).

One-year limitations period for modifying workers' compensation awards did not bar claimant's claim for a schedule payment of permanent partial disability benefits where the issue of permanency was not considered in her prior compensation claim and award for temporary total disability wage loss benefits. D.C. Code 1981, §§ 36-308, 36-324(a). Capitol Hill Hosp. v. District of Columbia Dep't of Empl. Servs., 726 A.2d 682, 1999 D.C. App. LEXIS 71 (1999).

Amputation undergone by workers' compensation claimant, who had previously received a schedule payment for a permanent partial disability, justified a narrow departure from the general principle that, once claimant reaches maximum medical improvement and receives a schedule award, he is not entitled to renewed temporary total disability benefits; after his surgery, claimant needed time to be once again at the stage of maximum medical improvement. D.C. Code 1981, § 36-308(3). Cherrydale Heat-

ing & Air Conditioning v. Department of Empl. Servs., 722 A.2d 31, 1998 D.C. App. LEXIS 231 (1998).

Change of condition experienced by workers' compensation claimant, who had previously received schedule payment for permanent partial disability and who now sought renewed temporary total disability benefits on ground that her condition had worsened to the point of requiring surgery, did not justify departure from general principle that, once claimant reaches maximum medical improvement and receives schedule award, she is not entitled to renewed temporary total disability benefits. D.C. Code 1981, § 36-308(3). Cherrydale Heating & Air Conditioning v. Department of Empl. Servs., 722 A.2d 31, 1998 D.C. App. LEXIS 231 (1998).

Moot cases.

Decision of Department of Employment Services' denying workers' compensation benefits could not be relied upon to deny any future claim for workers' compensation benefits arising from that injury, though claim was moot, given agency's failure to consider treating physician's testimony concerning condition of claimant's back injury, and need to protect claimant's legal right to a proper adjudication of his potential claims for temporary or permanent disability should his work-related back injury affect his future ability to earn wages or receive further treatment; until agency properly considered treating physicians' testimony, issue of whether claimant's back strain had resolved remained open, as if claimant were making claim before the agency in first instance. White v. D.C. Dep't of Empl. Servs., 793 A.2d 1255, 2002 D.C. App. LEXIS 63 (2002).

Petition for review of the Department of Employment Services' denial of claim for further workers' compensation benefits was moot where there were no pending claims related to claimant's back injury and he was awarded disability benefits he requested. White v. D.C. Dep't of Empl. Servs., 793 A.2d 1255, 2002 D.C. App. LEXIS 63 (2002).

On appeal in workers' compensation action, letter by employer's counsel and apparently unopposed motion to dismiss appeal and remand to administrative agency for approval of settlement, both of which asserted that case has been settled by parties, were insufficient to dismiss appeal as moot, where motion did not contain copy of agreement or contain information about terms of agreement or appellate costs. D.C. Code 1981, § 36-308(8); Court of Appeals Rule 42(b). Milar Elevator Co. v. District of Columbia Dep't of Empl. Servs., 704 A.2d 291, 1997 D.C. App. LEXIS 279 (1997).

Notice.

An employer is not required to have actual knowledge of a claimant's previous disability or physical impairment to be eligible for special fund relief under the Workers' Compensation Act. Mergentime Perini v. D.C. Dep't of Empl. Servs., 810 A.2d 901, 2002 D.C. App. LEXIS 670 (2002).

An employer has been put on notice, as is required to be eligible for special fund relief under the Workers' Compensation Act, when the employer has actual knowledge of the workers' compensation claimant's previous condition or when a reasonable person in the employer's shoes would have known about that condition. Mergentime Perini v. D.C. Dep't of Empl. Servs., 810 A.2d 901, 2002 D.C. App. LEXIS 670 (2002).

In determining whether a reasonable person in the shoes of the employer would have known about a claimant's previous disability or physical impairment, as is required to be eligible for special fund relief under the Workers' Compensation Act, the availability of information to the employer regarding the claimant's previous condition is crucial, because the financial incentive to discriminate cannot arise unless information regarding a worker's previous condition is available to an employer. Mergentime Perini v. D.C. Dep't of Empl. Servs., 810 A.2d 901, 2002 D.C. App. LEXIS 670 (2002).

Mere existence of medical records documenting workers' compensation claimant's previous disability or physical impairment, without showing of their availability to employer, was not sufficient to put employer on notice of worker's previous condition, as was required for employer to be entitled to special fund relief under Workers' Compensation Act. Mergentime Perini v. D.C. Dep't of Empl. Servs., 810 A.2d 901, 2002 D.C. App. LEXIS 670 (2002).

Under objective standard for the "manifest" requirement and special fund eligibility, the existence of medical records documenting a workers' compensation claimant's pre-existing disability or physical impairment, standing alone, and without proof of their availability to the employer, is not sufficient to put an employer on notice of the claimant's pre-existing condition. Mergentime Perini v. D.C. Dep't of Empl. Servs., 810 A.2d 901, 2002 D.C. App. LEXIS 670 (2002).

Employer received inadequate notice that scheduled workers' compensation award might be at issue, where language of prehearing conference order characterized claim exclusively as a wage loss claim, order contained no language referring, in the alternative, to a possible scheduled loss, and nearly all argument and documentation submitted by both sides during hearing dealt with issue of unscheduled injury to neck and spine. D.C. Code 1981, § 36-308(3)(V). Transportation Leasing Co. v. De-

partment of Empl. Servs., 690 A.2d 487, 1997 D.C. App. LEXIS 33 (1997).

Partial incapacity.

— Degree of disability, partial incapacity.

Machinist's helper who, after suffering injury to eyes resulting in 100 per cent. loss of vision of left eye and 25 per cent. loss of vision of right eye, restored use of right eye to normal and of left eye to 50 per cent. of normal vision by use of eyeglasses and was re-employed by same employer at increased wage held entitled to compensation of 66 ⅔ per cent. of difference between average weekly wages earned by him at time of injury and his actual wage-earning capacity thereafter rather than compensation provided for loss of 80 per cent. or more of vision of an eye, since assistance of glasses should be considered in determining extent of loss of vision. Longshoremen's and Harbor Workers' Compensation Act, § 8(c)(16, 19, 21), 33 U.S.C. § 908(c), 16, 19, 21; § 22, as amended by Act May 26, 1934, § 5, 33 U.S.C. § 922; D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Washington Terminal Co. v. Hoage, 79 F.2d 158, 1935 U.S. App. LEXIS 4052 (1935).

Administrative law judge (ALJ) was justified in finding unpersuasive the opinion of workers' compensation claimant's treating physician that claimant had a permanent 20% impairment of her left leg, even though employer did not present a medical expert of its own; no medical evidence indicated that the physician, before he pronounced in a letter to claimant's lawyer that the impairment was permanent, was aware of complaints by claimant of left-leg problems or symptoms or directed treatment for the left leg, and the physician did not explain the medical basis for a conclusion that the impairment to the left leg was causally related to an earlier work injury. Golding-Alleyne v. D.C. Dep't of Empl. Servs., 980 A.2d 1209, 2009 D.C. App. LEXIS 474 (2009).

Physician's mathematical conversion of claimant's whole body permanent partial disability of 20% to 5% disability to claimant's legs and 15% to claimant's back was reasonable method for determining degree of schedule disability. D.C. Code 1981, § 36-308(3)(B, S). Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 683 A.2d 470, 1996 D.C. App. LEXIS 214 (1996).

Degree of workers' compensation claimant's disability cannot be measured by physical condition alone; injured worker's age, industrial history, and availability of type of work which he can do must also be considered. D.C. Code 1981, § 36-308(2). Washington Post v. District of Columbia Dep't of Empl. Servs., 675 A.2d 37, 1996 D.C. App. LEXIS 69 (1996).

— Impairment of earning power as basis of award, partial incapacity.

To qualify for an award for permanent partial disability under the Workers' Compensation Act, a claimant must actually suffer a reduction in average weekly wages as a result of the disability. Pro-Football, Inc. v. District of Columbia Dep't of Empl. Servs., 782 A.2d 735, 2001 D.C. App. LEXIS 217 (2001).

Workers' compensation claimant was not entitled to a permanent disability award, partial in character, for chronic lumbar back pain, where claimant did not suffer an actual loss of wages, but rather was paid his full salary in his supervisory capacity as a telephone frame attendant. D.C. Code 1981, § 36-308(3)(V)(ii). Harris v. District of Columbia Dep't of Empl. Servs., 746 A.2d 297, 2000 D.C. App. LEXIS 27 (2000).

Claimant's presentation of evidence that, due to his injury of chronic lumbar back pain, his physical condition was permanently changed, was insufficient to establish a permanent disability, under statute governing disabilities partial in character but permanent in quality; rather, claimant was required to show that he suffered a permanent loss in wages because of the permanent change in physical condition. D.C. Code 1981, § 36-301(3, 8). Harris v. District of Columbia Dep't of Empl. Servs., 746 A.2d 297, 2000 D.C. App. LEXIS 27 (2000).

— In general.

Department of Employment Services (DOES) was not required to limit professional hockey player's award for his work-related injury according to his work-life expectancy as a professional athlete, as statute imposing such a limit on an award applied only to "disabilities partial in character but permanent in quality," but player obtained compensation for his temporary partial disability (TPD), such that statute limiting TPD awards to period not exceeding five years applied to player's award. Lincoln Hockey, LLC v. D.C. Dep't of Empl. Servs., 997 A.2d 713, 2010 D.C. App. LEXIS 350 (2010).

The knee is part of the leg, and a permanent partial disability of the knee is therefore compensable as a disability of a scheduled member under the Workers' Compensation Act. Walden v. District of Columbia Dep't of Empl. Servs., 759 A.2d 186, 2000 D.C. App. LEXIS 217 (2000).

That workers' compensation claimant's permanent physical condition of chronic lumbar back pain caused a loss of wage earning capacity was not a valid basis for an award under statute governing disabilities partial in character but permanent in quality. D.C. Code 1981, § 36-308(3)(V)(ii). Harris v. District of Columbia Dep't of Empl. Servs., 746 A.2d 297, 2000 D.C. App. LEXIS 27 (2000).

— Incapacity for work or employment generally, partial incapacity.

Claimant was not entitled to a permanent disability award, partial in character, for

chronic lumbar back pain that was an alleged aggravation of a previous injury, where claimant was capable of performing his usual sedentary employment in his supervisory capacity as a telephone frame attendant, and claimant suffered no loss of wages, but rather received his full salary. D.C. Code 1981, § 36-308(3, 6). Harris v. District of Columbia Dep't of Empl. Servs., 746 A.2d 297, 2000 D.C. App. LEXIS 27 (2000).

Workers' compensation claimant was not disabled due to his chronic lumber back pain, such that he would be entitled to an award for a period in which he stopped working, under statute governing disabilities partial in character but permanent in quality, where report of employer's orthopedic consultant stated claimant was able to perform sedentary work in his supervisory capacity as a telephone frame attendant. D.C. Code 1981, § 36-308(3)(V)(ii). Harris v. District of Columbia Dep't of Empl. Servs., 746 A.2d 297, 2000 D.C. App. LEXIS 27 (2000).

Particular and scheduled injuries.

— In general.

Workers' compensation claimant who suffers a schedule disability, i.e., one for which the statute provides a fixed payment in terms of weeks of compensation, may not opt to recover actual lost wages in lieu of the fixed amount available for such a disability. D.C. Code 1981, § 36-308(3)(A-M). Morrison v. District of Columbia Dep't of Empl. Servs., 736 A.2d 223, 1999 D.C. App. LEXIS 188 (1999).

— Loss of use of member, particular and scheduled injuries.

Ironworker, who suffered on-the-job injury resulting in permanent partial loss of use of leg, could not opt to recover actual lost wages in lieu of "schedule award" providing compensation based on fraction of average weekly wage for fixed period of weeks. D.C. Code 1981, §§ 36-301 to 36-345, 36-308(a)(3)(A-V). Lenaerts v. District of Columbia Dep't of Employment Services, 545 A.2d 1234, 1988 D.C. App. LEXIS 132 (1988).

— Several injuries, particular and scheduled injuries.

When workers' compensation claimant suffers multiple disabilities from a single work-injury, claimant is entitled to both schedule and non-schedule benefits, subject to proof that the non-schedule disability led to wage loss. D.C. Code 1981, § 36-308(3)(A-M, V). Morrison v. District of Columbia Dep't of Empl. Servs., 736 A.2d 223, 1999 D.C. App. LEXIS 188 (1999).

Presumptions and burden of proof.

To show that an injury is compensable under the Workers Compensation Act, the employee must establish that the work event or condition at issue was the cause of the claimed injury, that is, that the injury is in fact work-related. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

Once a claimant shows that she has a work-related impairment, she is entitled to a finding of disability unless the employer demonstrates availability of suitable alternative employment. Georgetown Univ. Hosp. v. D.C. Dep't of Empl. Servs., 929 A.2d 865, 2007 D.C. App. LEXIS 473 (2007).

The law does not require a claimant seeking disability benefits to prove a causal relationship by introducing evidence that specifically links the disability to the work-related injury; rather, the law in the District of Columbia creates a presumption that once a claimant demonstrates a work-related injury and a subsequent disability, the claim comes within the provisions of the Workers' Compensation Act. Georgetown Univ. Hosp. v. D.C. Dep't of Empl. Servs., 929 A.2d 865, 2007 D.C. App. LEXIS 473 (2007).

The workers' compensation claimant has the burden of proving the nature and extent of her disability. Burge v. D.C. Dep't of Empl. Servs., 842 A.2d 661, 2004 D.C. App. LEXIS 53 (2004).

Claimant, a professional basketball player, who sought temporary total disability benefits related to lost employment during the off-season, was not required to establish that she had a guarantee of employment during the off-season to be entitled to recover benefits; rather, a showing of disability had to be by "substantial evidence." Mills v. D.C. Dep't of Empl. Servs., 838 A.2d 325, 2003 D.C. App. LEXIS 751 (2003).

An employer seeking relief from the special fund for second or successive injuries of workers' compensation claimants must prove that claimant's previous disability was "manifest" to employer; if a previous disability is not manifest, an employer would have no reason to discriminate against the handicapped person, and any relief to the employer would amount to a windfall. Mergentime Perini v. D.C. Dep't of Empl. Servs., 810 A.2d 901, 2002 D.C. App. LEXIS 670 (2002).

Previously impaired condition.

A workers' compensation claimant's previous disability or physical impairment is manifest to an employer, for purposes of awarding special fund relief, when the condition puts the employer on notice of greatly increased liability and thus creates a risk of discrimination. Mergentime Perini v. D.C. Dep't of Empl. Servs., 810 A.2d 901, 2002 D.C. App. LEXIS 670 (2002).

If a claimant's prior and current injuries together cause a permanent disability, statute

governing disabilities partial in character but permanent in quality applies, and the employer is liable as if the current injury alone caused the disability. D.C. Code 1981, § 36-308(3, 6). Harris v. District of Columbia Dep't of Empl. Servs., 746 A.2d 297, 2000 D.C. App. LEXIS 27 (2000).

Where there is prior injury, liability should be imposed as if subsequent injury alone caused the disability. D.C. Code 1981, § 36-308(6)(A). Daniel v. District of Columbia Dep't of Employment Servs., 673 A.2d 205, 1996 D.C. App. LEXIS 49 (1996).

Purpose of second injury provision.

The purpose of the special fund for second or successive injuries of workers' compensation claimants is to prevent and reduce employment discrimination based on the risk of disability-related liability and to eliminate a specific financial incentive not to hire or retain previously injured workers. Mergentime Perini v. D.C. Dep't of Empl. Servs., 810 A.2d 901, 2002 D.C. App. LEXIS 670 (2002).

Purpose of "second injury" provision of Workers' Compensation Act is to encourage employers to hire and retain handicapped workers by limiting employers' liability for disabilities which result from the combination of a preexisting impairment and a subsequent work-related accident. D.C. Code 1981, § 36-308(6). Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 704 A.2d 295, 1997 D.C. App. LEXIS 275 (1997).

Primary purpose of second injury provision of Workers' Compensation Act and its federal counterpart, the Longshore and Harbor Workers' Compensation Act, is to prevent and reduce employment discrimination based on risk of disability-related injury; thus, Special Fund reimbursement should hinge on whether preexisting condition puts employer on notice of greatly increased liability and thus creates a risk of discrimination. Longshore and Harbor Workers' Compensation Act, § 8(f), 33 U.S.C. § 908(f); D.C. Code 1981, § 36-308(6). Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 704 A.2d 295, 1997 D.C. App. LEXIS 275 (1997).

Purpose of statute permitting reimbursement from special fund when two injuries combine to produce "substantially greater disability" is to encourage employers to employ and retain handicapped workers, and purpose is served by limiting employer's liabilities for disabilities which result from combination of preexisting impairment and subsequent work-related accident. D.C. Code 1981,§ 36-308(6). John Driggs Corp. v. District of Columbia Dep't of Employment Servs., 632 A.2d 740, 1993 D.C. App. LEXIS 270 (1993).

Remand.

Remand was required to allow the administrative law judge (ALJ) to reconsider physician's testimony as to whether claimant's left knee condition resulted from an aggravation of a previous work-related injury, in claimant's action to recover benefits for an injury to her left knee, which she claimed was a natural consequence of a work-related injury to her right knee. Jackson v. D.C. Dep't of Empl. Servs., 955 A.2d 728, 2008 D.C. App. LEXIS 383 (2008).

Although entertaining considerable doubt that workers' compensation claimant, who was entitled to permanent total disability benefits based on the condition of his left hip, was also entitled to receive permanent partial disability benefits in relation to the condition of his right knee, Court of Appeals would remand the case to the Compensation Review Board (CRB) with directions to reconsider that issue in the light of the authorities cited in appellate court's opinion. Howard Univ. Hosp. v. D.C. Dep't of Empl. Servs., 952 A.2d 168, 2008 D.C. App. LEXIS 233 (2008).

ALJ's error in following decisions of the Director of the Department of Employment Services that require ALJs to choose a disability percentage rating provided either by the claimant's or the employer's medical examiner warranted vacating Compensation Review Board's decision in so far as it affirmed ALJ's compensation order on the merits and remand of case to Board with instructions to remand to ALJ for reconsideration. Negussie v. D.C. Dep't of Empl. Servs., 915 A.2d 391, 2007 D.C. App. LEXIS 7 (2007).

In light of workers' compensation claimant's uncontroverted testimony that he continued to work to maintain an income but ultimately stopped because physician had instructed him to take leaves of absence and that he then went to Senegal, because he could no longer afford to live in the United States while unemployed, there was no basis for administrative law judge's (ALJ) finding that claimant left his work voluntarily and, thus, remand was required for further explanation of the ALJ's decision. NGOM v. D.C. Dep't of Empl. Servs., 913 A.2d 1266, 2006 D.C. App. LEXIS 656 (2006).

Department of Employment Services' failure to address workers' compensation claimant's argument that position offered to her by her employer was not suitable because it would have compelled her to give up her part-time job warranted remand for consideration and decision. Morrison v. District of Columbia, 834 A.2d 890, 2003 D.C. App. LEXIS 635 (2003).

In Workers' Compensation proceedings to determine whether hospital employee's ankle injury was compensable, Department of Employment Services (DOES) was required to consider whether employer's conduct in administering injection to employee's ankle aggravated or complicated injury, such that injury would be

compensable, even though original injury occurred away from work. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

Director of Department of Employment Services was precluded from denying claim for workers' compensation benefits because claimant resigned to take a better paying job, without considering that claimant's wages in his disabled state—both before he resigned and after he began the new employment—were still below what he had earned before his work-related injury. Krause v. D.C. Dep't of Empl. Servs., 825 A.2d 934, 2003 D.C. App. LEXIS 412 (2003).

Remand was required for hearing examiner to determine whether workers' compensation claimant was entitled to permanent total disability benefits, where it appeared that examiner improperly placed on claimant burden of establishing that there were no other jobs to which claimant could return and examiner's decision failed to address treating physician's conclusion that claimant was permanently totally disabled. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

Case would be remanded for further findings on whether workers' compensation claimant, who was entitled to payments for schedule injury based on permanent partial disability to his arm, also suffered disability to his shoulder, and if he did, claimant could obtain both schedule benefits for arm disability and non-schedule benefits for shoulder disability upon proof that his separate and distinguishable shoulder disability led to wage loss. D.C. Code 1981, § 36-308(3)(A, V). Morrison v. District of Columbia Dep't of Empl. Servs., 736 A.2d 223, 1999 D.C. App. LEXIS 188 (1999).

Workers' compensation case would be remanded to Department of Employment Services (DOES) due to inconsistencies in the record both as to facts and findings. LaRose v. District of Columbia Dep't of Empl. Servs., 721 A.2d 614, 1998 D.C. App. LEXIS 237 (1998).

Court of Appeals would not defer to Department of Employment Services' (DOES) interpretation of statute governing reduction of workers' compensation benefits based upon claimant's receipt of benefits from other sources, but instead would remand for authoritative interpretation of statute, where interpretation reached Court through default review procedures and thus was not reviewed by DOES director, hearing examiner relied on case which was not authoritative precedent on precise issue presented, and record did not indicate that hearing examiner analyzed language, structure, or purpose of statute. D.C. Code 1981, §§ 36-308(9), 36-322(b). Mushroom Transp. v. District of Columbia Dep't of Empl. Servs., 698 A.2d 430, 1997 D.C. App. LEXIS 183 (1997).

Remand was required of determination by the Department of Employment Services, denying claim by employer and carrier for reimbursement from special fund, for explicit consideration of issue of whether preexisting condition is required to be "manifest" at time claimant was hired, and for delineation of precise standards for determining whether an employer has met its burden of showing that condition was manifest. D.C. Code 1981, § 36-308(6). John Driggs Corp. v. District of Columbia Dep't of Employment Servs., 632 A.2d 740, 1993 D.C. App. LEXIS 270 (1993).

Special Fund reimbursement.

Remand to Department of Employment Services (DOES) was required for a determination of whether employer and insurer were entitled to Special Fund relief under the Workers' Compensation Act for their paying lump-sum settlement to claimant who had a pre-existing condition, which resulted in a substantially greater disability; Department misread case when deciding relief was not warranted, and further proceedings were required for it to conduct independent statutory analysis and reasoning. Genstar Stone Prods. Co. v. Dep't of Empl. Servs., 777 A.2d 270, 2001 D.C. App. LEXIS 150 (2001).

Employer is eligible for Special Fund reimbursement of workers' compensation payments if it establishes that employee's preexisting disability was manifest to employer prior to second injury even though that may have been after date employee was hired. D.C. Code 1981, § 36-308(6). Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 704 A.2d 295, 1997 D.C. App. LEXIS 275 (1997).

Statute providing that employer may recover from special fund for compensation payments in excess of 104 weeks of permanent partial or total disability arising out of second injury to worker when injury combined previous disability or impairment to cause "substantially greater disability" or death does not suggest work injury standing alone must reach certain threshold in order to render total disability substantially greater, and does not require numerical analysis comparing percentage of permanent disability attributable to work-related accident to percentage of total disability. D.C. Code 1981, § 36-308(6). John Driggs Corp. v. District of Columbia Dep't of Employment Servs., 632 A.2d 740, 1993 D.C. App. LEXIS 270 (1993).

Stress.

No unusual stress is required for award for injury sustained by employee during course of

his employment and award should be granted so long as death or injury results from activity in course of employment. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-50 as amended 33 U.S.C. §§ 901-950; D.C. Code § 36-501. Wheatley v. Adler, 407 F.2d 307, 1968 U.S. App. LEXIS 6912 (C.A.D.C. 1968).

Psychological injuries are only compensable under the Workers' Compensation Act if the accident constitutes a sufficient stressor. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Psychiatrist's opinion that a work-related accident caused emotional stress on claimant because it placed limitations on her activities, without more, is insufficient to support a claim of disability based on emotional injury. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Workers' compensation claim of psychological injury was insufficient as matter of law, though claimant's psychiatrist opined that claimant's bus door accident caused emotional stress because it placed limitations on her activities, given that claimant admitted she was predisposed to psychological problems, and psychiatrist's opinion did not indicate that the conditions that caused the emotional injury were so stressful that a reasonable person not predisposed to psychological injury might suffer the same injury. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Sunstroke and heat prostration.

Heat prostration arising out of and during course of employment is "accidental injury" within compensation statute, if nature of employment exposes employee to risk of such injury. Longshoremen's and Harbor Workers' Compensation Act, § 2(2), 33 U.S.C. § 902(2); D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Aetna Life Ins. Co. v. Hoage, 63 F.2d 818, 1933 U.S. App. LEXIS 3584 (1933).

Heat prostration suffered by delivery clerk while delivering groceries to customer's house held compensable as "accidental injury." Longshoremen's and Harbor Workers' Compensation Act, § 2(2), 33 U.S.C. § 902(2); D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Aetna Life Ins. Co. v. Hoage, 63 F.2d 818, 1933 U.S. App. LEXIS 3584 (1933).

Temporary and permanent disability.

Disability is permanent if it has continued for a lengthy period, and it appears to be of lasting or indefinite duration, as distinguished from one in which recovery merely awaits normal healing. Crum v. General Adjustment Bureau, 738 F.2d 474, 1984 U.S. App. LEXIS 20779 (C.A.D.C. 1984).

It was reasonable for Compensation Review Board to order concurrent awards of temporary total disability benefits due to a back impairment and permanent partial disability benefits ("schedule awards") based on impairments to claimant's legs caused by the same work injury; workers' compensation statute expressly authorized a schedule award in addition to compensation for temporary total disability or temporary partial disability, and Board's interpretation of the statute was not unreasonable. Howard Univ. Hosp. v. D.C. Dep't of Empl. Servs., 994 A.2d 375, 2010 D.C. App. LEXIS 226 (2010).

Under applicable workers' compensation statute, a claimant may be entitled to compensation for permanent partial disability concurrently with benefits for temporary disability, whether total or partial, but there is no comparable provision for permanent total disability. Howard Univ. Hosp. v. D.C. Dep't of Empl. Servs., 952 A.2d 168, 2008 D.C. App. LEXIS 233 (2008).

Evidence did not support continuation of temporary disability benefits to workers' compensation claimant after treating physician released her for full-time duty without restriction, even though claimant had been terminated from employment and remained unemployed. Georgetown Univ. Hosp. v. D.C. Dep't of Empl. Servs., 929 A.2d 865, 2007 D.C. App. LEXIS 473 (2007).

When a workers' compensation claimant suffers a wage loss due to circumstances at the workplace that is not based upon a pre-existing condition and cannot return to either her prior employment or employment commensurate with her abilities, temporary partial disability benefits may be awarded. Wash. Post v. D.C. Dep't of Empl. Servs., 853 A.2d 704, 2004 D.C. App. LEXIS 372 (2004).

Determination that workers' compensation claimant reached maximum medical improvement did not automatically warrant conversion of claimant's disability benefits to permanent status; whether and to what extent claimant was still employable was also consideration. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

Individuals with temporary disabilities are not eligible for supplemental allowances under Workers' Compensation Act. D.C. Code 1981, § 36-301 et seq. Hively v. District of Columbia Dep't of Empl. Servs., 681 A.2d 1158, 1996 D.C. App. LEXIS 171 (1996).

Scheduled award for permanent partial disability which worker received was "in addition to" temporary total benefits that she had earlier received for the same injury, so that she was not thereafter entitled to further compensation for temporary total disability benefits when future recurrent pain and discomfort arising out of the same injury caused an additional loss of wages. D.C. Code 1981, § 36-308(3). Smith v. District

of Columbia Dep't of Employment Services, 548 A.2d 95, 1988 D.C. App. LEXIS 172 (1988).

Total incapacity.

— Amount and period, total incapacity.

Awarding employee total disability would not result in overcompensation on ground he had been previously awarded 15% partial permanent disability for neck injury, where benefits for total disability were calculated by evaluating wage-earning capacity that remained after partial permanent disability was accounted for. Crum v. General Adjustment Bureau, 738 F.2d 474, 1984 U.S. App. LEXIS 20779 (C.A.D.C. 1984).

A workmen's compensation claimant who was completely disabled was entitled to receive workmen's compensation only until date that he began receiving a retirement pension from his employer. Longshoremen's and Harbor Workers' Compensation Act, § 21, 33 U.S.C. § 921; D.C. Code 1961, § 36-501. D. C. Transit System, Inc. v. Massey, 260 F. Supp. 310, 1966 U.S. Dist. LEXIS 7928 (D.D.C1966), reversed by 388 F.2d 584, 128 U.S. App. D.C. 328, 1967 U.S. App. LEXIS 4246 (1967).

Department of Employment Services' determination that claimants were entitled to lesser of 66 ⅔ percent of average weekly wages or 80 percent of spendable earnings was based on rational interpretation of District of Columbia Workers' Compensation Act section governing compensation for disability. D.C. Code 1981, § 36-308(a), (a)(1, 3), (e). McDaniels v. District of Columbia Dep't of Employment Services, 512 A.2d 990, 1986 D.C. App. LEXIS 366 (1986).

Sentence of District of Columbia Workers' Compensation Act section providing that, in all cases, payment of benefits shall be at lesser of 66 ⅔ percent of employee's average weekly wage or 80 percent of spendable earnings was not contradicted by preceding sentence deeming 80 percent of spendable earnings to be not less than 66 ⅔ percent of average weekly wages so as to render statute ambiguous. D.C. Code 1981, § 36-308(a), (a)(1, 3), (e). McDaniels v. District of Columbia Dep't of Employment Services, 512 A.2d 990, 1986 D.C. App. LEXIS 366 (1986).

District of Columbia Workers' Compensation Act section stating that, in all cases, payment of benefits shall be at lesser of 66 ⅔ percent of employee's average weekly wage or 80 percent of spendable earnings is not restricted only to those who are temporarily totally disabled. D.C. Code 1981, § 36-308(a),(a)(1, 3), (e). McDaniels v. District of Columbia Dep't of Employment Services, 512 A.2d 990, 1986 D.C. App. LEXIS 366 (1986).

— In general.

Workers' compensation claimant suffers from total disability if his injuries prevent him from engaging in only type of gainful employment for which he is qualified. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

Total disability does not mean absolute helplessness, and workers' compensation claimant need not show that he is no longer able to do any work at all; instead, claimant who is so injured that he can perform no services other than those which are so limited in quality, dependability, or quantity that reasonably stable market for them does not exist may well be classified as totally disabled. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

Total disability does not mean absolute helplessness, and workers' compensation claimant need not show that he is no longer able to do any work at all. D.C. Code 1981, § 36-308(2). Washington Post v. District of Columbia Dep't of Empl. Servs., 675 A.2d 37, 1996 D.C. App. LEXIS 69 (1996).

— Incapacity for work or employment generally, total incapacity.

Employee suffered from total and not partial disability, where employee's evidence presented prima facie case of total disability, and employer, who had burden of producing some evidence of availability of alternative work, was unwilling to alter employee's working conditions as suggested both by employer's and employee's physicians. Crum v. General Adjustment Bureau, 738 F.2d 474, 1984 U.S. App. LEXIS 20779 (C.A.D.C. 1984).

Although hearing examiner properly required workers' compensation claimant seeking permanent total disability benefits to show that his condition had reached maximum medical improvement and that he was unable to return to his usual, or to any other, employment as result of injury, examiner should have clarified that any other employment did not include services so limited in quality, dependability, or quantity that reasonably stable market for them did not exist. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

In challenging legitimacy of employer's evidence of suitable job availability, workers' compensation claimant seeking total disability benefits is not required to show that he tried to get identical jobs employer showed were available; claimant must merely show that he was reasonably diligent in attempting to secure job within compass of employment opportunities shown by employer to be reasonably attainable and available. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

Although it is enough for employer opposing permanent total disability benefits claim to show that range of jobs existed that were rea-

sonably available and that workers' compensation claimant could realistically secure and perform, this showing must be specific enough to show compatibility between claimant's actual skills and limitations and duties of proffered jobs. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

Workers' compensation benefits claimant voluntarily limited his income when he retired, and retirement was not related to work injury, and thus, claimant was not entitled to temporary total disability benefits after date of retirement, where claimant was cleared by treating physician to return to normal job duties before he retired, and retirement, rather than being coerced, was traceable to claimant's own economic decisions pertaining to his sick leave, health, and life insurance benefits. D.C. Code 1981, § 36-308(3)(V)(iii). Baliles v. District of Columbia Dep't of Empl. Servs., 728 A.2d 661, 1999 D.C. App. LEXIS 106 (1999).

— Light or occasional work, total incapacity.

Employee who is so injured that he can perform no services other than those which are so limited in quality, dependability, or quantity that reasonably stable market for them does not exist, may well be classified as totally disabled for purposes of workers' compensation. D.C. Code 1981, § 36-308(2). Washington Post v. District of Columbia Dep't of Empl. Servs., 675 A.2d 37, 1996 D.C. App. LEXIS 69 (1996).

Evidence that claimant has been able to earn occasional wages or perform certain kinds of gainful work does not necessarily rule out finding of total disability nor require that it be reduced to partial. Washington Post v. District of Columbia Dep't of Empl. Servs., 675 A.2d 37, 1996 D.C. App. LEXIS 69 (1996).

— Previous physical impairment, total incapacity.

Mental deficiency of claimant, whose intelligence quotient on Wechsler-Bellvue scale was measured as 69, whose disability due to such deficiency was not shown to have been "manifest," and who as result of such mental deficiency and loss of use of right hand was permanently totally disabled, was not "previous disability" within Longshoremen's and Harbor Workers' Act provision to effect that if employee receives injury, which of itself is only cause of permanent partial disability but which, combined with previous disability, does in fact cause permanent total disability, employer is required to provide compensation only for disability caused by subsequent injury. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-50, 2(10), 8(a, c, f), (f)(1), 44 as amended 33 U.S.C. §§ 901-950, 902(10), 908(a, c, f), (f)(1), 944; D.C. Code § 36-501. American Mut. Ins. Co. v. Jones, 426 F.2d 1263, 1970 U.S. App. LEXIS 9560 (C.A.D.C. 1970).

In construing statutory provision that if an employee receive an injury which of itself would only cause permanent partial disability but which, combined with a previous disability, does in fact cause permanent total disability, the employer should provide compensation only for disability caused by the subsequent injury, the relevant parts of the statutory definitions of "disability" and "injury" must be read in the place of the defined word "disability", so that the statutory phrase "combined with a previous disability" becomes "combined with a previous incapacity because of accidental injury arising out of and in course of employment". Longshoremen's and Harbor Workers' Compensation Act §§ 2(2, 10), 8(f), 33 U.S.C. §§ 902(2, 10), 908(f); D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note. National Homeopathic Hospital Ass'n of Dist. of Col. v. Britton, 147 F.2d 561, 1945 U.S. App. LEXIS 3444 (1945).

Where employee fell in course of his work and fractured right kneecap, but previous accidents, none of them connected with any employment, had fractured same kneecap and had led to amputation of left leg and left arm, and the fracture caused by the fall, combined with the previous fracture and amputations, caused permanent total disability, the employee was properly awarded compensation based on permanent total disability and on his earning capacity at time of the fall. Longshoremen's and Harbor Workers' Compensation Act §§ 2(2, 10), 8(f), 33 U.S.C. §§ 902(2, 10), 908(f); D.C. Code 1940,§ 36-501; 33 U.S.C. § 901 note. National Homeopathic Hospital Ass'n of Dist. of Col. v. Britton, 147 F.2d 561, 1945 U.S. App. LEXIS 3444 (1945).

Weight and sufficiency of evidence.

— Aggravation, weight and sufficiency of evidence.

In suit by widow to set aside denial of benefits for death of husband who had been awarded compensation as having been totally and permanently disabled while on job by unexpected overexertion which materially aggravated preexisting aneurysm of abdominal aorta, evidence established that exertion materially aggravated diseased aortic condition, and that disabling effect of injury continued until death. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1951, § 36-501, 33 U.S.C. § 901 note. Friend v. Britton, 220 F.2d 820, 1955 U.S. App. LEXIS 4623 (C.A.D.C. 1955).

Where deceased's conduct demonstrates a sudden change in a pre-existing illness, the question arises whether that illness had been aggravated by the employment; and where upon a truck driver's return from a long and

arduous trip he suddenly became obsessed with idea that he was being pursued by mob, with result that he was confined in jail, and was thereafter shot by police officer whom truck driver had violently attacked, wherein there was evidence of pre-existing nervous disorder, evidence was sufficient to warrant conclusion that death arose out of and in the course of employment. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1951, § 36-501, 33 U.S.C. § 901 note. Robinson v. Bradshaw, 206 F.2d 435, 1953 U.S. App. LEXIS 3924 (C.A.D.C. 1953).

Evidence that pre-existing spinal arthritis was aggravated by back injury sustained by employee in 1930 and that after similar injury in 1935 employee became totally disabled from carrying out any type of gainful occupation justified an award of compensation on ground of "total disability" resulting from 1935 injury. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1940, §§ 36-501, 36-502, 33 U.S.C. § 901 note. Great Atlantic & Pacific Tea Co. v. Cardillo, 127 F.2d 334, 1942 U.S. App. LEXIS 4759 (1942).

Findings by Department of Labor that complaints received by clerical employee, rejection of a suggestion made by her, and an increase in amount of work employee was to perform aggravated employee's underlying obsessive and compulsive state, precipitated a marked worsening in a long-existing emotional condition, and required employee to cease work and receive institutionalized psychiatric care, which constituted an injury arising out of and in course of her employment at Institute, and entitled her to compensation benefits under Longshoremen's and Harbor Workers' Compensation Act were supported by substantial evidence. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 2(2), 3, 21(b), 33 U.S.C. §§ 901 et seq., 902(2), 903, 921(b); D.C. Code § 36-501. Urban Land Institute v. Garrell, 346 F. Supp. 699, 1972 U.S. Dist. LEXIS 13098 (1972).

On workers' compensation claimant's application for temporary total disability benefits, employer's evidence was insufficient to rebut presumption that claimant's low back condition was causally related to prior slip and fall at work; claimant's statement that he experienced the most back pain while driving did not negate assertion that he had continuing back pain since the fall, and claimant's physicians expressly opined that present injury was causally related to the prior injury, which was aggravated by his driving. Sibley Mem. Hosp. v. D.C. Dep't of Empl. Servs., 805 A.2d 974, 2002 D.C. App. LEXIS 501 (2002).

Testimony of treating doctor, that crack present for first time on postinjury X-ray was probably an aggravation and that doctor believed employee sustained injury which made symptoms of employee's arthritic hip condition worse, provided substantial evidentiary support for hearing examiner's proposed order awarding employee workers' compensation disability benefits, and thus, decision of the Director of the Department of Employment Services to reject the proposed order constituted reversible error. Dell v. Department of Employment Services, 499 A.2d 102, 1985 D.C. App. LEXIS 496 (1985).

— In general.

Finding that apartment complex manager was temporarily totally disabled due to shoulder injury was sufficiently supported by medical testimony, though there was evidence that her termination from employment was caused by factors other than her medical condition. Parklands, Inc. v. Director, Office of Workers' Compensation Programs, U.S. Dep't of Labor, 877 F.2d 1030, 1989 U.S. App. LEXIS 9099 (C.A.D.C. 1989).

Finding that apartment complex manager who injured her shoulder was temporarily totally disabled as of certain date was sufficiently supported by expert medical testimony, as buttressed by claimant's testimony. Parklands, Inc. v. Director, Office of Workers' Compensation Programs, U.S. Dep't of Labor, 877 F.2d 1030, 1989 U.S. App. LEXIS 9099 (C.A.D.C. 1989).

Substantial evidence, including the physician's evaluation of employee's condition, which, while improved, appeared to be of indefinite duration, supported administrative law judge's conclusion that employee's angina was permanent rather than temporary within meaning of Longshoremen's and Harbor Workers' Compensation Act. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-51, as amended, 33 U.S.C. §§ 901-950. Crum v. General Adjustment Bureau, 738 F.2d 474, 1984 U.S. App. LEXIS 20779 (C.A.D.C. 1984).

Deputy commissioner's total disability award was sustained by evidence that employment-related accident aggravated employee's preexisting coronary arteriosclerosis, causing first myocardial infarct which in turn contributed to second myocardial infarct by increasing employee's susceptibility to it, these conditions combining to produce quantum of disability which rendered employee totally unfit for work. Longshoremen's and Harbor Workers' Compensation Act,§§ 2(2), 19(a), 21(b), as amended, 33 U.S.C. §§ 902(2), 919(a), 921(b). J. V. Vozzolo, Inc. v. Britton, 377 F.2d 144, 1967 U.S. App. LEXIS 7431 (C.A.D.C. 1967).

Evidence sustained deputy commissioner's findings that arteriosclerotic heart disease suffered by employee as result of injury resulting in chronic kidney infection sustained in 1943

was materially aggravated by strenuous physical activities while employed as foreman of painters in 1959 and compelled to climb and descend steps of Washington Monument and other tower and that his death in 1959 from heart attack was due equally to the two causes. United Painters and Decorators v. Britton, 301 F.2d 560, 1962 U.S. App. LEXIS 5610 (C.A.D.C. 1962).

Where coworker on third floor level was handing down to employee on ground planks weighing some 90 pounds each and employee collapsed while on the job, and it was found that he had suffered a paralysis of his right side due to occlusion of a cerebral vessel and that his "strenuous work" as found by deputy commissioner had accelerated a severe pre-existing, but symptom-free, diastolic hypertension, and also diagnosed was a sclerosis of the cerebral arteries, findings of district court that employee's injury arose out of and in course of his employment did not lack substantial support in the evidence. Longshoremen's and Harbor Workers' Compensation Act, § 20(a), 33 U.S.C. § 920(a); D.C. Code 1951, § 36-501. General Acc. Fire & Life Assur. Corp. v. Donovan, 251 F.2d 915, 1958 U.S. App. LEXIS 5264 (C.A.D.C. 1958).

Evidence supported deputy commissioner's finding that relapse of an old tubercular condition suffered by bank teller and allegedly caused by standing at bank, talking to customers, and constant use of teller's arm in stamping stubs did not arise out of employment within the Longshoremen's Compensation Act. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Groom v. Cardillo, 119 F.2d 697, 1941 U.S. App. LEXIS 4656 (1941).

Evidence considered and held to be "substantial evidence" in support of compensation award on theory that injuries hastened death of diabetic employee who, about a year before, had bruised his toe, which became infected, leaving a permanently unhealed stump after four amputations, notwithstanding testimony of absence of causal relation between injury and death. D.C. Code, 1929, T. 19, § 11, 33 U.S.C. § 901 note; Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C., § 901 et seq. Avignone Freres, Inc. v. Cardillo, 117 F.2d 385, 1940 U.S. App. LEXIS 4733 (1940).

In compensation case, evidence, which tended to show that grocery store clerk, who was unaware of having enlarged heart, suffered aortic regurgitation which was precipitated by strenuous exertion in handling sacks of potatoes and which condition in turn caused death, held to sustain finding of deputy commissioner that clerk sustained compensable "accidental injury". Longshoremen's and Harbor Workers' Act, 33 U.S.C. § 901 et seq.; D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Commercial Casualty Ins. Co. v. Hoage, 75 F.2d 677, 1935 U.S. App. LEXIS 3029 (1935).

Evidence sustained finding that a bus driver, as the result of an accident, sustained a neurosis that was completely disabling, and that such neurosis was an accidental injury arising out of and in the course of his employment. Longshoremen's and Harbor Workers' Compensation Act, § 21, 33 U.S.C. § 921; D.C. Code 1961, § 36-501. D. C. Transit System, Inc. v. Massey, 260 F. Supp. 310, 1966 U.S. Dist. LEXIS 7928 (D.D.C1966), reversed by 388 F.2d 584, 128 U.S. App. D.C. 328, 1967 U.S. App. LEXIS 4246 (1967).

Evidence supported finding that claimant's disability from lower-back problems was caused by work-related injury that occurred when she was knocked in the forehead by closet door that had fallen off its hinges; although claimant was treated for forehead contusion and neck pain, and did not immediately complain of lower-back injury, there was evidence that lower-back injury resulted from claimant's physical therapy for neck pain. Georgetown Univ. Hosp. v. D.C. Dep't of Empl. Servs., 929 A.2d 865, 2007 D.C. App. LEXIS 473 (2007).

Substantial evidence supported determination of Department of Employment Services (DOES) director that stipulation, in which employer agreed to pay temporary total disability benefits for specified time period, did not constitute complete and final settlement of claim that triggered running of one-year limitations period for requesting modification of benefits, but instead constituted voluntary payment of benefits; stipulation acknowledged possibility of future claims. Sodexho Marriott Corp. v. D.C. Dep't of Empl. Servs., 858 A.2d 452, 2004 D.C. App. LEXIS 444 (2004).

Treating physician preference, applied in workers' compensation cases, and under which medical opinion of treating physician is given greater weight than opinions of doctors retained to examine workers' compensation claimant solely for purpose of litigation, is applicable to disability benefits cases brought by public employees under Comprehensive Merit Personnel Act (CMPA); preference is unrelated to Workers' Compensation Act's presumption of compensability, claims under CMPA are not less adversarial than workers' compensation claims, and preference is commonly applied at administrative level in cases arising under CMPA. Kralick v. D.C. Dep't of Empl. Servs., 842 A.2d 705, 2004 D.C. App. LEXIS 57 (2004).

In workers' compensation cases, medical opinion of treating physician is generally entitled to greater weight than opinions of doctors who have been retained to examine claimant solely for purpose of litigation; although hearing officer remains free to reject testimony of

treating physician, he cannot do so without explicitly addressing that testimony and explaining why it is being rejected. Kralick v. D.C. Dep't of Empl. Servs., 842 A.2d 705, 2004 D.C. App. LEXIS 57 (2004).

Rejection by hearing officer and Director of Department of Employment Security (DOES) of testimony of public employee's treating physician was based on incorrect factual premise that treating physician's opinion was not most recent opinion, and thus treating physician's opinion was entitled to preference over opinions of physicians retained to examine employee solely for litigation purposes, in action by public employee seeking review of termination of temporary total disability benefits paid under Comprehensive Merit Personnel Act (CMPA); record showed treating physician had examined employee on same day, or earlier, than other physicians. Kralick v. D.C. Dep't of Empl. Servs., 842 A.2d 705, 2004 D.C. App. LEXIS 57 (2004).

Workers' compensation claimant, a professional basketball player, was not entitled to lost-wage benefits, where claimant voluntarily left her basketball career for reasons unrelated to her injury; when basketball team declined to extend her contract after tryouts, claimant lacked a desire to return to basketball because she was more interested in settling down and having a family, and while she had several opportunities to play basketball elsewhere, she chose to seek a career in sports broadcasting, and when that career did not pan out, she changed career goals and ended up as registered massage therapist. Kralick v. D.C. Dep't of Empl. Servs., 842 A.2d 705, 2004 D.C. App. LEXIS 57 (2004).

Claimant, a professional basketball player, who sought temporary total disability benefits related to lost employment during the off-season, presented substantial evidence that could form basis for a finding of a wage loss resulting from her "on the job" wrist injury; Turkish basketball team paid claimant $50,000 for her play during the ensuing off-season, and, as a number two draft pick, claimant plainly had much to offer to the Turkish club. Mills v. D.C. Dep't of Empl. Servs., 838 A.2d 325, 2003 D.C. App. LEXIS 751 (2003).

Director of the Department of Employment Services erred in finding that treating physician did not address issue of whether workers' compensation claimant suffered injury to left leg; report reflected that treating physician found claimant was still afflicted with "residual pain in the anterior lateral aspect of the left ankle with increased activity," but suffered no atrophy, weakness, decreased endurance or decrease in function, and treating physician wrote that no award was appropriate for injury to limbs but instead claimant suffered a "whole person" impairment. Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs., 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

Substantial evidence supported Department of Employment Services' finding that workers' compensation claimant failed to accept employment commensurate with her physical abilities; employer provided claimant with nine months of vocational rehabilitation counseling, these services resulted in an offer of employment for which claimant was qualified, her reason for rejecting the position as "too strenuous" was based on her inaccurate belief that the 24 hour on-call requirement extended beyond every other week, and she testified that she could handle the position's job requirements. Morrison v. District of Columbia, 834 A.2d 890, 2003 D.C. App. LEXIS 635 (2003).

Department of Employment Services' decision awarding workers' compensation benefits to claimant did not flow rationally from the facts and was not supported by substantial evidence; hearing examiner rejected doctor's testimony concerning damage to claimant's cervical discs, but accepted doctor's opinion that the head and shoulder impact of work collision caused headaches, which in turn disabled claimant from resuming employment, and doctor specifically rejected any post-concussion basis and instead relied solely on theory that there was damage to the C6 spine area, causing muscle spasms which caused the headaches, and no other physician supported this theory. Lincoln Hockey, LLC v. D.C. Dep't of Empl. Servs., 831 A.2d 913, 2003 D.C. App. LEXIS 552 (2003).

Evidence was sufficient to support finding of causal connection between claimant's pre-employment MMR (measles, mumps, and rubella) inoculation, and claimant's subsequent seizure disorder, even though employer's experts opined that seizures occurred too soon after inoculation to be related to inoculation, where claimant's expert reported that claimant had not suffered seizures from brain injury received 32 years earlier, and only began suffering seizures after inoculation, and hearing examiner could infer that claimant's pre-existing injury might have shortened normal reaction time between inoculation and seizure effects claimant experienced. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 821 A.2d 898, 2003 D.C. App. LEXIS 223 (2003).

Rejecting employer's request for a 28% credit, based on the percentage of the disability employer claimed was owing to workers' compensation claimant's prior work injury was not error; award of benefits to workers' compensation claimant based on the full 80% disability, even if one-third of his disability was due to an earlier injury, was consistent with relevant provisions of Workers' Compensation Act, and there was no evidence of a correlation between amount for which claimant settled his prior

claim and credit employer requested. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

Once workers' compensation claimant establishes prima facie case of total disability, employer must present sufficient evidence of suitable job availability to overcome finding of total disability; if employer meets that evidentiary burden, claimant may refute employer's presentation, and thereby sustain finding of total disability, either by challenging legitimacy of employer's evidence of available employment or by demonstrating diligence, but lack of success, in obtaining other employment. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

In evaluating evidence of record in proceeding for total disability benefits, Department of Employment Services (DOES) must take into account testimony of treating physician, which is ordinarily preferred over that of physician retained solely for litigation purposes; although hearing examiner may reject treating physician's testimony and decide to credit testimony of another physician when there is conflicting medical evidence, DOES must give reasons for such rejection. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

Evidence was sufficient to support hearing examiner's finding that workers' compensation claimant's head, neck and back injuries were resolved approximately three months after date of her last work-related accident even if neurologists, who opined that claimant either did not suffer from any medical condition related to the accident or that she was neuro-ophthalmologically intact, were not considered as claimant's treating physicians, as their medical opinions were consistent. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Evidence was insufficient to support hearing examiner's finding that workers' compensation claimant was not entitled to further medical benefits for her low back injury following her jury box accident where the utilization review report prepared by the employer's doctors did not, contrary to employer's contention, represent that the lower back injury had resolved. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Evidence was sufficient to support hearing examiner's finding that workers' compensation claimant's cervical disc injury was not related to her bus door accident, but not sufficient to support finding that her neck injury was unrelated; although neurosurgeon's report opined that neither condition was related to claimant's employment, the neurosurgeon subsequently reconsidered his opinion regarding the neck injury and concluded that it was caused by the accident, and only other evidence regarding that injury claim was opinion of claimant's osteopath, who also concluded that the neck injury was causally related. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Evidence was sufficient to support hearing examiner's finding that workers' compensation claimant was not entitled to further temporary total disability benefits related to claimant's lower back injury from a bus door accident, where claimant's physician, a neurosurgeon, had opined that claimant had full range of motion of her lumbar spine, and thus, her back condition had resolved, and there was no mention of any complications. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Hearing examiner's determination that claimant did not suffer a rateable impairment for carpal tunnel syndrome of his right hand based on grip weakness was not supported by substantial evidence; fact that physical therapy report indicated claimant was more concerned with pain than with grip weakness did not mean that grip weakness could not form the basis for any permanent partial disability award, and claimant's doctor found significant impairment as a result of grip weakness. Muhammad v. District of Columbia Dep't of Empl. Servs., 774 A.2d 1107, 2001 D.C. App. LEXIS 171 (2001).

Hearing examiner's determination that claimant did not suffer a rateable impairment for carpal tunnel syndrome of the right hand was not supported by substantial evidence, even if grip weakness could not form the basis for an award; evidence indicated that claimant suffered from pain, tingling, reduced coordination, and general dysfunction of his right hand and arm, and hearing examiner did not address the relevance of those symptoms and did not determine if claimant suffered a rateable impairment through them. Muhammad v. District of Columbia Dep't of Empl. Servs., 774 A.2d 1107, 2001 D.C. App. LEXIS 171 (2001).

Workers' compensation hearing examiner's conclusion that claimant's complaints of neck and shoulder pain were result of her degenerative cervical and lumbar disc disease, and not casually related to employment was supported by substantial evidence in the record; record showed that claimant had continuously complained of neck and shoulder pain long before alleged employment accident, and doctor testified that claimant's condition was gradual degenerative process. Ferreira v. District of Columbia Dep't of Employment Servs., 667 A.2d 310, 1995 D.C. App. LEXIS 192 (1995).

Evidence of medical expert that excessive dose of methadone causes sleepiness, absent statement that dosage taken by employee was excessive, was insufficient to show that employee's drug dependency was previous "physical

impairment" causing "substantially greater disability," so as to qualify employer for reimbursement of workers' compensation payments from Special Fund. D.C. Code 1981, §§ 36-301(8, 17), 36-308(6). Red Star Express v. District of Columbia Dep't of Employment Services, 606 A.2d 161, 1992 D.C. App. LEXIS 88 (1992).

Hearing examiner's conclusion that worker seeking workers' compensation benefits was ready for work at certain date was based on substantial evidence; last doctor visited by claimant testified that on review of earlier doctors' reports there existed no objective orthopedic basis for worker's not returning to work on date hearing examiner found claimant to be ready for work. George Hyman Constr. Co. v. District of Columbia Dep't of Employment Services, 498 A.2d 563, 1985 D.C. App. LEXIS 503 (1985).

— Partial disability, weight and sufficiency of evidence.

Substantial evidence supported finding that workers' compensation claimant, a former newspaper press operator, suffered and continued to suffer from a disability as result of allergic reaction caused by exposure to chemical used in printing press, entitling her to partial disability benefits; claimant did not have the condition prior to her employment, condition went away when she stopped working in printing operation, and both claimant's treating physician and independent medical examiner opined that claimant developed allergic condition due to exposure to chemicals at workplace, and that she should not return to such environment. Wash. Post v. D.C. Dep't of Empl. Servs., 853 A.2d 704, 2004 D.C. App. LEXIS 372 (2004).

Findings on the percentage of permanent partial impairment to workers' compensation claimant's left knee were supported by substantial evidence, including medical evidence that claimant had reached maximum medical improvement and physician's assessment of claimant's impairment. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

Hearing examiner's ruling, as adopted by Director of Department of Employment Services, that workers' compensation claimant suffered from a 5% permanent partial disability to his legs was supported by substantial evidence; claimant testified that he had intermittent pain in his right leg that affected his daily activities and claimant's treating physician testified that claimant had permanent partial disability of 5% in his legs. D.C. Code 1981, § 36-308(3)(B, S). Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 683 A.2d 470, 1996 D.C. App. LEXIS 214 (1996).

§ 32-1509. Compensation for death.

If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

(1) Reasonable funeral expenses not exceeding $5,000.

(2) If there be a surviving spouse or domestic partner and no child of the deceased, to such surviving spouse or domestic partner 50% of the average wages of the deceased, for as long as the surviving spouse or domestic partner does not remarry or enter into a domestic partnership, with 2 years' compensation in 1 sum upon remarriage or entry into a domestic partnership; and if there be a surviving child or children of the deceased, the additional amount of 16⅔% of such wages for each such child; in case of the death, remarriage, or entry into a domestic partnership of such surviving spouse or domestic partner, if there be 1 surviving child of the deceased employee, such child shall have his compensation increased to 50% of such wages, and if there be more than 1 surviving child of the deceased employee to such children, in equal parts, 50% of such wages increased by 16⅔% of such wages for each child in excess of 1; provided, that the total amount payable shall in no case exceed 66⅔% of such wages. The Mayor may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement, the appointment of a guardian for such purposes shall not be necessary.

(3) If there be 1 surviving child of the deceased, but no surviving spouse

or domestic partner then for the support of such child 50% of the wages of the deceased; and if there be more than 1 surviving child of the deceased, but no surviving spouse or domestic partner then for the support of such children, in equal parts 50% of such wages increased by 16⅔% of such wages for each child in excess of 1; provided, that the total amount payable shall in no case exceed 66⅔% of such wages.

(4) If there be no surviving spouse or domestic partner or child or if the amount payable to a surviving spouse or domestic partner and to children shall be less in the aggregate than 66⅔% of the average wages of the deceased, then for the support of grandchildren or brothers and sisters if dependent upon the deceased at the time of the injury, 20% of such wages for the support of each such person and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the injury 25% of such wages during such dependency. But in no case shall the aggregate amount payable under this paragraph exceed the difference between 66⅔% of such wages and the amount payable as herein before provided to surviving spouse or domestic partner and for the support of surviving child or children.

(5) Weekly death benefits paid under this section shall not exceed the average weekly wages of insured employees in the District of Columbia, or $396.78, whichever is greater.

(6) All questions of dependency shall be determined as of the time of the injury or knowledge by the employee of an occupational disease.

(July 1, 1980, D.C. Law 3-77, § 10, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(e), 37 DCR 6890; Sept. 12, 2008, D.C. Law 17-231, § 31(e), 55 DCR 6758.)

Section references. — This section is referred to in §§ 32-1508, 32-1524, and 32-1535.

Prior Codifications. — 1981 Ed., § 36-309.

Effect of amendments. — D.C. Law 17-231 substituted "surviving spouse or domestic partner" for "widow or widower" throughout the section; and rewrote par. (2), which had read as follows: "(2) If there be a widow or widower and no child of the deceased, to such widow or widower 50% of the average wages of the deceased, during widowhood, or widowerhood, with 2 years' compensation in 1 sum upon remarriage; and if there be a surviving child or children of the deceased, the additional amount of 16 ⅔% of such wages for each such child; in case of the death or remarriage of such widow or widower, if there be 1 surviving child of the deceased employee, such child shall have his compensation increased to 50% of such wages, and if there be more than 1 surviving child of the deceased employee to such children, in equal parts, 50% of such wages increased by 16 ⅔% of such wages for each child in excess of 1; provided, that the total amount payable shall in no case exceed 66 ⅔% of such wages. The Mayor may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement, the appointment of a guardian for such purposes shall not be necessary."

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 8-198. — For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 32-1542.01.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 32-408.

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 32-1501.

CASE NOTES

ANALYSIS

In general.
Judicial review.
Subrogation rights.
Surviving spouse or domestic partner entitled to death benefits.
Weight and sufficiency of evidence.

In general.

For purposes of determining coverage under former and present workers' compensation statutes, death benefits claim derives from worker's employment-related injury, rather than death of worker. D.C. Code 1981, § 36-301 et seq. Shea v. Director, Office of Workers' Compensation Programs, etc., 929 F.2d 736, 1991 U.S. App. LEXIS 5616 (C.A.D.C. 1991).

To show that an injury is compensable under the Workers Compensation Act, the employee must establish that the work event or condition at issue was the cause of the claimed injury, that is, that the injury is in fact work-related. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

Judicial review.

Neither the Court of Appeals, nor the Director of the Department of Employment Services (DOES), was obligated to look beyond statutes workers' compensation insurer cited at the administrative level to support its contention that claimant was remarried in a foreign country and, thus, was no longer entitled to death benefits. Hudson Trail Outfitters v. District of Columbia Dep't of Empl. Servs., 801 A.2d 987, 2002 D.C. App. LEXIS 368 (2002).

Like Director of Department of Employment Services (DOES), Court of Appeals must sustain DOES hearing examiner's finding of dependency, for purposes of award of widow death benefits under workers' compensation law, if it is supported by substantial evidence in the record as a whole, even if there is evidence supporting a contrary conclusion. D.C. Code 1981, §§ 36-301(20), 36-309. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 716 A.2d 976, 1998 D.C. App. LEXIS 137 (1998).

Subrogation rights.

Under District of Columbia law, employer's voluntary monthly compensation payments to deceased worker's personal representative did not operate as assignment to employer of all of personal representative's rights to recover damages against manufacturer of asphalt distributing machine that killed worker, even though employer had asserted lien for its payments against personal representative, where no compensation order had been filed with Mayor, no payment had been made into Mayor's special fund, and Mayor had not made determination that no one was entitled to death benefits. Jefferson v. E. D. Etnyre & Co., 300 F.Supp.2d 109, 2004 U.S. Dist. LEXIS 1304 (2004).

Surviving spouse or domestic partner entitled to death benefits.

To be entitled to workmen's compensation award as widow, woman must have continued to live as deserted wife of employee who has deserted her, and there must be bond in reality between husband and wife in their relation to one another, essential ingredient in her claim being her real status factually, not existing legal formalities of relationship. Longshoremen's and Harbor Workers' Compensation Act, §§ 2(16), 9(b) as amended 33 U.S.C. §§ 902(16), 909(b); D.C. Code 1951, §§ 36-501, 36-502, 33 U.S.C. § 901 note. Liberty Mut. Ins. Co. v. Donovan, 218 F.2d 860, 1955 U.S. App. LEXIS 4732 (C.A.D.C. 1955).

Even though purported widow of deceased employee had been deserted by him and had received no contribution from him for support, where such widow had borne another man's children and had received regular weekly support from him and registered herself as his wife in hospital when having such children, and where, within week after employee's death, widow and other man lived together in common law relationship, she was not "widow" within meaning of Workmen's Compensation Law. Liberty Mut. Ins. Co. v. Donovan, 218 F.2d 860, 1955 U.S. App. LEXIS 4732 (C.A.D.C. 1955).

Where employee and wife lived apart by mutual consent, so that employee would be eligible for relief, wife made no objection to employee's leaving and no attempt to rejoin him, and employee made no regular contributions to wife's support, the wife was not entitled to compensation under the Longshoremen's Compensation Act for death of employee on theory that she was living apart for "justifiable cause". Longshoremen's and Harbor Workers' Compensation Act §§ 2(16), 9(b), 33 U.S.C. §§ 902(16), 909(b), D.C. Code 1940 § 36-501, 33 U.S.C. § 901 note. Weeks v. Behrend, 135 F.2d 258, 1943 U.S. App. LEXIS 4167 (1943).

Claimant's exchange of religious vows with her boyfriend in a religious ceremony in Nicaragua was insufficient to constitute a civil marriage, and thus, the ceremony did not provide a valid basis to discontinue claimant's workers' compensation death benefits on basis of remarriage following her husband's death, even if the minister had duty to register the marriage results civilly, where language of the Nicaragua Code unambiguously stated that for a marriage performed by ecclesiastic authority to be recog-

nized civilly, it was "essential" that the parish certificate be recorded in the named civil registry, and it was undisputed that the marital certificate was not recorded. Hudson Trail Outfitters v. District of Columbia Dep't of Empl. Servs., 801 A.2d 987, 2002 D.C. App. LEXIS 368 (2002).

Claimant's exchange of religious vows with her boyfriend in a religious ceremony in Nicaragua was insufficient to constitute a civil marriage, and thus, the ceremony did not provide a valid basis to discontinue claimant's workers' compensation death benefits on basis of remarriage following her husband's death even if Nicaragua recognized some unions as de facto marriages, and gave civil effect to marriages contracted in good faith but declared null, where hearing examiner made no finding on whether the couple meant their religious union to be recognized civilly. Hudson Trail Outfitters v. District of Columbia Dep't of Empl. Servs., 801 A.2d 987, 2002 D.C. App. LEXIS 368 (2002).

Claimant was not "equitably estopped" from claiming widow's workers' compensation benefits because "for all practical purposes," she had remarried in Nicaragua, given that intent of the compensation statute was to allow a widow or widower to receive spousal benefits absent remarriage—either a formal or in the District a common law marriage. Hudson Trail Outfitters v. District of Columbia Dep't of Empl. Servs., 801 A.2d 987, 2002 D.C. App. LEXIS 368 (2002).

In determining whether claimant was dependent upon her husband for support at the time of his death, such that she was "widow" entitled to workers' compensation death benefits, the pertinent question was whether, at that time, husband's contributions were looked to by claimant for maintenance of claimant's accustomed standard of living. Pickrel v. District of Columbia Dep't of Empl. Servs., 760 A.2d 199, 2000 D.C. App. LEXIS 233 (2000).

Claimant was not dependent upon her husband at time of his death and, thus, was not a "widow" entitled to workers' compensation death benefits; in their separation agreement, parties divided their marital property and provided that each party was responsible for his own debts, and there was no reason why claimant who had surrendered all right to look to husband for support while he was living should, upon his death, receive benefits that were intended to replace the support which husband had been providing. Pickrel v. District of Columbia Dep't of Empl. Servs., 760 A.2d 199, 2000 D.C. App. LEXIS 233 (2000).

Where parties enter into separation agreement which erases any claim of existing conjugal nexus, it is irrelevant that workers' compensation claimant was living apart from the decedent for justifiable cause for purposes of statute defining "widow," who is entitled to workers' compensation death benefits, as the decedent's wife living with or dependent for support upon decedent at the time of his death or living apart for justifiable cause. Pickrel v. District of Columbia Dep't of Empl. Servs., 760 A.2d 199, 2000 D.C. App. LEXIS 233 (2000).

Even if conjugal nexus continued to exist for some time after claimant left her husband, the parties' separation agreement extinguished that nexus, and absent any evidence that conjugal nexus was revived subsequent to execution of separation agreement, claimant was not a widow under the justifiable cause prong of statute defining "widow," who is entitled to receive workers' compensation death benefits, as including decedent's wife living with or dependent for support upon decedent at time of his death or living apart for justifiable cause. Pickrel v. District of Columbia Dep't of Empl. Servs., 760 A.2d 199, 2000 D.C. App. LEXIS 233 (2000).

Inquiry into whether a claimant is a "widow" entitled to workers' compensation death benefits is two-pronged; it first must be determined if the claimant and the decedent were living apart for justifiable cause, and it must then be determined if there was a conjugal nexus between them that subsisted at the time of the decedent's death. D.C. Code 1981, § 36-301 et seq. Beta Constr. Co. v. District of Columbia Dep't of Empl. Servs., 748 A.2d 427, 2000 D.C. App. LEXIS 81 (2000).

The conjugal nexus test, as element in determining whether a claimant is a "widow" entitled to workers' compensation death benefits, focuses on the real status of the claimant in respect to the deceased, not the existing legal formalities of the relationship. D.C. Code 1981, § 36-301 et seq. Beta Constr. Co. v. District of Columbia Dep't of Empl. Servs., 748 A.2d 427, 2000 D.C. App. LEXIS 81 (2000).

Weight and sufficiency of evidence.

Worker killed in workplace fall was sole employee of subcontractor, not borrowed or joint employee of general contractor, and thus subcontractor was solely liable for paying workers' compensation death benefits, although worker volunteered to help general contractor for 10 minutes after finishing shift with subcontractor, where worker was not paid for this help, and showed no intent to enter employment relationship with general contractor. Union Light & Power Co. v. D.C. Dep't of Empl. Servs., 796 A.2d 665, 2002 D.C. App. LEXIS 85 (2002).

Substantial evidence supported finding of the Department of Employment Services (DOES) that claimant and her husband were living apart for justifiable cause at the time of husband's death, as element in determining whether claimant was a "widow" entitled to workers' compensation death benefits, where

claimant moved into a smaller apartment with her two children when husband failed to provide adequate support, and two attempts at reconciliation failed due to husband's refusal to contribute to the household. D.C. Code 1981, § 36-301 et seq. Beta Constr. Co. v. District of Columbia Dep't of Empl. Servs., 748 A.2d 427, 2000 D.C. App. LEXIS 81 (2000).

Substantial evidence supported Department of Employment Services (DOES) hearing examiner's finding that police officer's widow, who was separated from officer at time of his death, was financially dependent upon officer, such that she was entitled to widow death benefits; in some months, widow would have been unable to pay her monthly expenses without financial help from officer, and she had no savings or investments at the time officer died. D.C. Code 1981, §§ 36-301(20), 36-309. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 716 A.2d 976, 1998 D.C. App. LEXIS 137 (1998).

§ 32-1510. Occupational disease.

In case of pneumoconiosis, such as silicosis and asbestosis, radiation diseases, and any other generally recognized occupational disease, liability for compensation rests with the employer of the last known exposure.

(July 1, 1980, D.C. Law 3-77, § 11, 27 DCR 2503.)

Prior Codifications. — 1981 Ed., § 36-310.
Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

§ 32-1511. Determination of average weekly wage.

(a) Except as otherwise provided in this chapter, the average weekly wage of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

(1) If at the time of the injury the wages are fixed by the week, the amount so fixed shall be the average weekly wage;

(2) If at the time of the injury the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by 12 and divided by 52;

(3) If at the time of the injury the wages are fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by 52;

(4) If at the time of injury wages are fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by 26 the total wages the employee earned in the employ of the employer in the 26 consecutive calendar weeks immediately preceding the injury. If the employee has been in the employ of the employer less than 26 weeks, the total wages referred to in paragraph (3) of this subsection shall be the amount the employee would have earned had the employee been employed by the employer for the full 26 calendar weeks immediately preceding the injury and had worked, when work was available to other employees, in a similar occupation; or

(5) If it be established that the employee, when injured, was a minor or a student as defined in § 32-1501(18) and that under normal conditions his wages should be expected to increase during the period of disability, whether such disability be temporary, partial, or permanent in character, the fact shall be considered in arriving at his average weekly wage.

(6) If the injured employee has not worked in this employment during substantially the whole of the period, the employee's average weekly wage

shall consist of 130 times the average daily wage or salary, divided by 26 weeks, which an employee of the same class working substantially the whole of the immediately preceding period in the same or similar employment, in the same or a similar neighboring place, shall have earned in the employment during the days when so employed.

(b) The terms "average weekly wage" and "total wages" as used in this section shall include reasonable value for board and lodging received from the employer plus gratuities declared for tax purposes by the employee.

(July 1, 1980, D.C. Law 3-77, § 12, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(f), 46 DCR 891; Oct. 14, 1999, D.C. Law 13-49, § 12(c), 46 DCR 5153.)

Prior Codifications. — 1981 Ed., § 36-311.

Effect of amendments. — D.C. Law 13-49 in subsec. (a)(6) inserted the phrase "divided by 26 weeks," after the phrase "salary,".

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 12-229. — For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 13-49. — For Law 13-49, see notes following § 32-1501.

CASE NOTES

ANALYSIS

Actual earnings.
Evidence.
In general.
Issue preclusion.
Promotion prior to injury.
Wage stacking.
Week of injury.

Actual earnings.

Two weeks during which claimant participated in a strike properly were excluded when calculating claimant's average weekly wage (AWW) for purposes of determining amount of workers' compensation to which he was entitled; although statute provided that claimant's AWW was to be computed by dividing by 13 the total wages he earned in the employ of the employer in the 13 consecutive weeks immediately preceding the injury, using all thirteen weeks in this case would not result in a true reflection of claimant's AWW. UPS v. D.C. Dep't of Empl. Servs., 834 A.2d 868, 2003 D.C. App. LEXIS 627 (2003).

Approach whereby workers' compensation claimant's average weekly wage is calculated by referring to amount earned for weeks actually worked by claimant, although less than 13 weeks, under assumption that claimant would have worked during entire 13-week period at same rate or in same pattern as he worked during period that spanned his actual employment, is reasonable. D.C. Code 1981, §§ 36-311, 36-311(a)(4). George Hyman Constr. Co. v. District of Columbia Dep't of Employment Services, 497 A.2d 103, 1985 D.C. App. LEXIS 465 (1985).

Reference to workers' compensation claimant's actual earnings during five consecutive weeks for which claimant worked for employer led to fair computation of claimant's average weekly wage even though based on period shorter than 13 weeks. D.C. Code 1981, §§ 36-311, 36-311(a)(4). George Hyman Constr. Co. v. District of Columbia Dep't of Employment Services, 497 A.2d 103, 1985 D.C. App. LEXIS 465 (1985).

Evidence.

Evidence sustained deputy commissioner's findings that musicians who were paid $10 wages a night, five days a week and who received tips had average wage of $65 per week. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; D.C. Code 1951, § 36-501. Great Am. Indem. Co. v. Britton, 186 F.Supp. 938, 1960 U.S. Dist. LEXIS 4250 (D.D.C1960).

In general.

Amount of workers' compensation claimant's wage loss was properly computed as difference between average weekly preinjury wage and postinjury wage, rather than by reference to wage loss based on what claimant's income would have been, absent injury, at time of her maximum medical improvement. D.C. Code 1981,§§ 36-301(8), 36-308(3)(V), (5), 36-311(a). Mason v. District of Columbia Dep't of Employment Services, 562 A.2d 644, 1989 D.C. App. LEXIS 152 (1989).

Wages shown on amended tax returns may be used in calculating workers' compensation benefits. D.C. Code 1981, § 36-311(b). Washington Metropolitan Area Transit Authority v. District of Columbia Dep't of Employment Services, 515 A.2d 740, 1986 D.C. App. LEXIS 449 (1986).

Issue preclusion.

For res judicata purposes, issue of workers' compensation claimant's average weekly wage was "actually litigated" and "determined" in prior proceeding, pursuant to stipulation as to wage amount. D.C. Code 1981, § 36-311. Oubre v. District of Columbia Dep't of Employment Servs., 630 A.2d 699, 1993 D.C. App. LEXIS 208 (1993).

Issue preclusion principles do not apply in workers' compensation proceeding where there is manifest error in record of prior proceeding based upon parties' mutual mistake in calculating statutory rate of compensation. D.C. Code 1981, § 36-311. Oubre v. District of Columbia Dep't of Employment Servs., 630 A.2d 699, 1993 D.C. App. LEXIS 208 (1993).

Promotion prior to injury.

Promotion of ironworker, who was paid on hourly basis, from apprentice to journeyman approximately two weeks prior to on-the-job injury resulting in permanent partial loss of use of leg did not entitle ironworker to adjustment to rule otherwise applicable when calculating "average weekly wage," for workers' compensation purposes. D.C. Code 1981, § 36-311(a)(4). Lenaerts v. District of Columbia Dep't of Employment Services, 545 A.2d 1234, 1988 D.C. App. LEXIS 132 (1988).

Wage stacking.

Using wage stacking to determine average weekly wage of workers' compensation claimant injured while working part-time job as security guard to compute claimant's total disability benefit but not using wage stacking when calculating claimant's permanent partial disability benefits was plain error in absence of clearly expressed rational for decision by Department of Employment Services examiner; further explanation by agency was required. D.C. Code 1981, §§ 36-301 to 36-345. DeShazo v. District of Columbia Dep't of Employment Servs., 638 A.2d 1152, 1994 D.C. App. LEXIS 34 (1994).

Workers' Compensation Act allowed wage stacking for worker who had worked part time in parking lot and full time for newspaper. D.C. Code 1981, §§ 36-301(21), 36-311(a)(4). MCM Parking Co. v. District of Columbia Dep't of Employment Services, 510 A.2d 1041, 1986 D.C. App. LEXIS 506 (1986).

Week of injury.

Department of Employment Services reasonably construed D.C. Code 1981, § 36-311(a)(4), governing computation of claimant's average weekly wage, by starting at "first full employer work week" preceding injury, rather than factoring in as full week the small portion of sixth work week in which claimant actually worked and received one day's pay. George Hyman Constr. Co. v. District of Columbia Dep't of Employment Services, 497 A.2d 103, 1985 D.C. App. LEXIS 465 (1985).

Language of D.C. Code 1981, § 36-311(a)(4), governing computation of average weekly wage of workers compensation claimant, which refers to "full 13 calendar weeks immediately preceding the injury," suggests that week of injury is not included in calculation when injury occurred sometime during week. George Hyman Constr. Co. v. District of Columbia Dep't of Employment Services, 497 A.2d 103, 1985 D.C. App. LEXIS 465 (1985).

§ 32-1512. Guardian for minor or incompetent.

The Mayor may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this chapter and to exercise the powers granted to or to perform the duties required of such person under this chapter.

(July 1, 1980, D.C. Law 3-77, § 13, 27 DCR 2503.)

Prior Codifications. — 1981 Ed., § 36-312.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

§ 32-1513. Notice of injury or death.

(a) Notice of any injury or death in respect of which compensation is payable under this chapter shall be given within 30 days after the date of such injury

or death, or 30 days after the employee or beneficiary is aware or in the exercise of reasonable diligence should have been aware of a relationship between the injury or death and the employment. Such notice shall be given to the Mayor and to the employer.

(b) Such notice shall be in writing, shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death, and shall be signed by the employee or by some person on his behalf, or, in case of death, by any person claiming to be entitled to compensation for such death or by a person on his behalf.

(c) Notice shall be given to the Mayor by delivering it to him or sending it by mail to him, and to the employer by delivering to him or by sending it by mail addressed to him at his last known place of business. If the employer is a partnership, such notice may be given to any partner, or, if a corporation, such notice may be given to any agent or officer thereof upon whom legal process may be served or who is in charge of the business in the place where the injury occurred.

(d) Failure to give such notice shall not bar any claim under this chapter:

(1) If the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury or death and its relationship to the employment and the Mayor determines that the employer or carrier has not been prejudiced by failure to give such notice; or

(2) If the Mayor excuses such failure on the ground that for some satisfactory reason such notice could not be given; or unless objection to such failure is raised before the Mayor at the 1st hearing of a claim for compensation in respect of such injury or death.

(July 1, 1980, D.C. Law 3-77, § 14, 27 DCR 2503.)

Section references. — This section is referred to in § 32-1538.

Prior Codifications. — 1981 Ed., § 36-313.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

CASE NOTES

Analysis

Actual notice or knowledge.
In general.
Presumptions and burden of proof.
Purpose.
Remand.
Sufficiency of notice.
Time for giving notice.
Weight and sufficiency of evidence.

Actual notice or knowledge.

Neither the ignorance, by medical resident who suffered a stroke while working at private-university's hospital, of an employee's obligation under the Workers' Compensation Act to provide the employer with timely written notice that the injury arose out of the employment, nor the medical resident's assumption that her treating physician, who also was employed by the hospital, would convey any necessary information to her supervisors, provided a ground for excusing medical resident from her obligation under the Act to provide hospital with timely written notice that the stroke was work-related. Howard Univ. Hosp. v. Dep't of Empl. Servs., 960 A.2d 603, 2008 D.C. App. LEXIS 440 (2008).

Even if medical resident's deteriorated mental or emotional condition, after she suffered a stroke while working at private-university's hospital, was such that she was not fully conducive to making well-founded, clear-headed judgments, such deterioration did not constitute legal incompetence, as would excuse her from Workers' Compensation Act's requirement that an employee provide the employer with timely written notice that the employee's injury arose out of the employment. Howard

Univ. Hosp. v. Dep't of Empl. Servs., 960 A.2d 603, 2008 D.C. App. LEXIS 440 (2008).

Workers' Compensation Act's presumption, that sufficient notice of the claim has been given to the employer, operates only in the absence of evidence to the contrary, and, once rebutted, the presumption drops out of the case entirely, leaving the burden on the employee to prove timely notice. Howard Univ. Hosp. v. Dep't of Empl. Servs., 960 A.2d 603, 2008 D.C. App. LEXIS 440 (2008).

Workers' Compensation Act's presumption that sufficient notice of the claim has been given to the employer applies both to the written notice requirement and to the alternative provision for actual knowledge by the employer. Howard Univ. Hosp. v. Dep't of Empl. Servs., 960 A.2d 603, 2008 D.C. App. LEXIS 440 (2008).

Neurologist employed by private-university's hospital, who provided treatment to medical resident for a stroke that medical resident suffered at hospital, and who concluded in the course of such treatment that medical resident's injury was work-related, could not be deemed to be an agent of the hospital for purposes of hospital's right under Workers' Compensation Act to receive timely notice that an employee's injury has arisen from employment, so that neurologist's knowledge would be imputed to hospital and the medical resident therefore would be excused from Act's requirement that an employee provide the employer with timely written notice that the injury arose out of employment; neurologist was not the medical resident's supervisor nor was he otherwise in charge of her work place, and neurologist was not charged with any duty as a hospital employee to report the medical resident's work-related injury to his superiors. Howard Univ. Hosp. v. Dep't of Empl. Servs., 960 A.2d 603, 2008 D.C. App. LEXIS 440 (2008).

Notice of claim provision of Workers' Compensation Act requires employee to provide employer with timely written notice not only of the injury, but also that the injury arose out of the employment. Howard Univ. Hosp. v. Dep't of Empl. Servs., 960 A.2d 603, 2008 D.C. App. LEXIS 440 (2008).

While the failure of the workers' compensation claimant to give proper notice of injury to the employer does not preclude a claim for causally-related medical expenses, which may include the cost of vocational rehabilitation services, it ordinarily does bar a claim for disability income benefits. Howard Univ. Hosp. v. Dep't of Empl. Servs., 960 A.2d 603, 2008 D.C. App. LEXIS 440 (2008).

Employer did not have actual knowledge of worker's injury, thereby excusing failure to give notice of injury required by workers' compensation law, where resignation letter and unemployment compensation claim which allegedly gave employer notice did not assert that worker suffered work-related injury or allege that worker was injured at all, but merely expressed worker's dissatisfaction with work environment. D.C. Code 1981, § 36-313(d)(1). Teal v. District of Columbia Dep't of Employment Services, 580 A.2d 647, 1990 D.C. App. LEXIS 228 (1990).

Injured employee's claim for workers' compensation benefits was not barred, though written notice to employer of injury was not timely; employer had actual notice of injury and its relationship to employment and was not prejudiced by late filing, as employer observed employee's fall and was aware of circumstances surrounding injury. D.C. Code 1981, § 36-313(d)(1, 2). Howrey & Simon v. District of Columbia Dep't of Employment Services, 531 A.2d 254, 1987 D.C. App. LEXIS 434 (1987).

In general.

Where employer learned of employee's death immediately and notified insurance carrier about five weeks after deceased's fatal injury of claim that it occurred as subsequently found by deputy employees' compensation commissioner, such officer properly found that employer was not prejudiced by lack of written notice of death. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; D.C. Code 1929, T. 19, §§ 11, 12. Associated General Contractors of America v. Cardillo, 106 F.2d 327, 1939 U.S. App. LEXIS 4706 (1939).

Claimant's failure to file written notice of accidental injury within statutory time held lawfully excused by Deputy Commissioner who found that employer had knowledge of claimant's condition during period, that at time of injury claimant did not know seriousness of his condition, and that facts of relation between his occupation and his condition were not made known to claimant immediately. Longshoremen's and Harbor Workers' Compensation Act, § 12, 33 U.S.C. § 912; Compensation Law D.C., D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. Hoage v. Royal Indemnity Co., 90 F.2d 387, 1937 U.S. App. LEXIS 3825 (1937).

Where only alleged notice given employer of heart attack allegedly sustained by claimant in the course of his employment was a telephone call by claimant's wife to employer on the following day, in which she informed employer that claimant had been ill the night before and that the doctor said he had a heart attack, and that he was in the hospital, and no further notice was given until approximately one year later, employer was deprived of timely notice of the claim asserted and such failure to give timely notice barred claimant's right to compensation. Longshoremen's and Harbor Workers' Compensation Act, §§ 12, 21, 33 U.S.C. §§ 912, 921; D.C. Code 1951, § 36-501. Good

Impressions, Inc. v. Britton, 169 F.Supp. 866, 1958 U.S. Dist. LEXIS 3301 (D.D.C1958).

Causally related medical expenses are not considered "compensation" within meaning of workers' compensation statute providing that notice of any injury in respect of which "compensation" is payable shall be given to employer within 30 days after the date of such injury, and thus, claims for causally related medical expenses are not barred by the failure of the employee to give the notice required by statute. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 832 A.2d 1267, 2003 D.C. App. LEXIS 570 (2003).

Worker may show, by substantial evidence, that work-related injury rendered worker unable to meet legal obligations, particularly obligation to give timely notice of injury to employer. D.C. Code 1981, § 36-313(a). Teal v. District of Columbia Dep't of Employment Services, 580 A.2d 647, 1990 D.C. App. LEXIS 228 (1990).

Presumptions and burden of proof.

Workers' Compensation Act incorporates a rebuttable presumption that claimant gave her employer notice of her injury in a timely fashion, in accordance with the humanitarian purposes of the Act. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 859 A.2d 1058, 2004 D.C. App. LEXIS 514 (2004).

Purpose.

The purposes of the requirement, in the Workers' Compensation Act, that the claimant furnish written notice of her injury to the employer, are to enable the employer to investigate the facts surrounding the injury and to provide prompt medical attention. Howard Univ. Hosp. v. Dep't of Empl. Servs., 960 A.2d 603, 2008 D.C. App. LEXIS 440 (2008).

Remand.

Workers' compensation case would be remanded to Department of Employment Services for consideration of claimant's argument that her claim for causally related medical benefits was not barred by her failure to give timely notice of injury to employer, where claimant raised argument in challenging ALJ's decision denying benefits, Director reversed ALJ's decision on other grounds and did not address argument, as moot, and ground on which Director reversed ALJ's decision was reversed on appeal. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

Workers' compensation case would be remanded to permit Department of Employment Services (DOES) to make findings with respect to when claimant's injury occurred and when claimant became aware, or should have become aware, that her injury was work related for purposes of 30-day notice requirement. D.C. Code 1981, § 36-313. Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 721 A.2d 616, 1998 D.C. App. LEXIS 235 (1998).

Failure of Director of Department of Employment Services to consider whether workers' compensation claimant's provision of notice of his work-related injury to foreman conferred knowledge of such injury upon either his employer or "agent in charge" at place where injury occurred, so as to satisfy alternative notice provisions of Workers' Compensation Act, necessitated remand of case to Director. D.C. Code 1981, § 36-313(d)(1). Wahlne v. District of Columbia Dep't of Empl. Servs., 704 A.2d 1196, 1997 D.C. App. LEXIS 284 (1997).

Remand of workers' compensation case to Department of Employment Services for further fact-finding was necessitated by Department's failure to determine whether claimant's failure to give timely notice to his employer of his injuries was statutorily excused for "some satisfactory reason." D.C. Code 1981, § 36-313(d)(2). Jimenez v. District of Columbia Dep't of Empl. Servs., 701 A.2d 837, 1997 D.C. App. LEXIS 239 (1997).

Sufficiency of notice.

In general, where an agency has failed to address and make findings on a material, contested issue of fact, a reviewing court must remand the case for findings on that issue. Dillon v. D.C. Dep't of Empl. Servs., 912 A.2d 556, 2006 D.C. App. LEXIS 641 (2006).

Leave slip allegedly given by workers' compensation claimant to employer, bearing check marks pointing to a job-related injury, was relevant in proceedings on employee's claim for compensation, to demonstrate employer's timely knowledge of the claim, even though leave slip did not include statement of time, place, nature, and cause of injury, as required for statutory notice of claim, given that leave slip arguably informed employer of a recent job-related injury. Dillon v. D.C. Dep't of Empl. Servs., 912 A.2d 556, 2006 D.C. App. LEXIS 641 (2006).

Workers' compensation claimant's statement to foreman that he had injured his back while working at another site, that he was seeing doctor for physical therapy and that he needed to be put on light duty was sufficiently detailed to constitute notice to that foreman that claimant's injury was work-related, for purposes of determining whether claimant satisfied statutory notice requirements. D.C. Code 1981, § 36-313(a, b), (d)(1). Wahlne v. District of Columbia Dep't of Empl. Servs., 704 A.2d 1196, 1997 D.C. App. LEXIS 284 (1997).

Employee attempted to make claim for workers' compensation, for purposes of retaliatory discharge claim, even though employee had not given written notification of work-related stress prior to termination, where employee orally

informed her supervisor that she suffered from work-related stress, requested time off to recuperate, and produced letter from treating psychiatrist that stated that he was treating employee for depression. D.C. Code 1981, §§ 36-313(d)(1), 36-342. Abramson Assoc., Inc. v. District of Columbia Dep't of Employment Services, 596 A.2d 549, 1991 D.C. App. LEXIS 233 (1991).

Time for giving notice.

The time within which notice of employee's death must be given to recover compensation therefor under Longshoremen's and Harbor Workers' Compensation Act runs from date of death, not that of fatal injury. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.; D.C. Code 1929, T. 19, §§ 11, 12. Associated General Contractors of America v. Cardillo, 106 F.2d 327, 1939 U.S. App. LEXIS 4706 (1939).

A claim for causally related medical benefits is not barred by an employee's failure to give timely notice of injury to employer. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

Although doctor discussed asbestos exposure as possible cause of workers' compensation claimant's mesothelioma, he did not tell claimant that it caused her mesothelioma because he did not have knowledge of asbestos at employer, and it was not until 5 months later when claimant received reports documenting asbestos at employer that there was causal relationship established between claimant's illness and her work, and thus, statutory 30-day notice period began, not when doctor discussed illness with claimant, but, rather, once claimant received reports, and thus, claimant's notice of injury, which was given before she received reports, was timely. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 859 A.2d 1058, 2004 D.C. App. LEXIS 514 (2004).

Statutory thirty day period in which workers' compensation claimant must give notice of injury begins after the exercise of reasonable diligence that makes the claimant aware of the causal relationship between the illness and the employment. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 859 A.2d 1058, 2004 D.C. App. LEXIS 514 (2004).

Weight and sufficiency of evidence.

ALJ's finding that workers' compensation claimant failed to provide timely written notice of her injury, as required by law, was supported by substantial evidence, even though claimant testified that she informed her supervisor of her injury within a week or so of its occurrence, and thus Director of Department of Employment Services was bound to accept ALJ's finding on appeal, where claimant's testimony was contradicted by her answers to interrogatories; ALJ had reasonable justification for not crediting claimant's testimony. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

Employer's interrogatory answer stating that workers' compensation claimant had informed it on or about certain date that he would be seeking medical leave for corrective surgery to his knees did not establish that claimant had complied with statutory requirement of providing timely notice to employer of his work-related injuries; answer did not indicate that employer had known claimant's knee injury was work-related or that claimant had satisfied statutory requirements that notice be in writing and provide information such as time, place, nature and cause of injury. D.C. Code 1981, § 36-313(a-c). Jimenez v. District of Columbia Dep't of Empl. Servs., 701 A.2d 837, 1997 D.C. App. LEXIS 239 (1997).

Substantial evidence supported finding of Department of Employment Services that workers' compensation claimant had been aware of relationship between his employment and his shoulder and knee injuries on date he had first visited doctor, thereby triggering 30-day statutory period for providing notice to his employer of such injuries; claimant testified that he had first visited doctor for treatment of pain in his knees and shoulder and that he had known at such time that his work activities were aggravating his pain. D.C. Code 1981, § 36-313(a). Jimenez v. District of Columbia Dep't of Empl. Servs., 701 A.2d 837, 1997 D.C. App. LEXIS 239 (1997).

Finding that worker was aware of alleged work-related injury of post-traumatic stress disorder and understood, or reasonably should have understood, nexus between injury and special working conditions by time he left employment, so that notification to employer of injury five months after resignation was untimely, was supported by evidence that physical manifestations of alleged injury, including lack of sleep, disorientation, and eating disorder were present prior to worker's resignation and continued after resignation, notwithstanding claim that deteriorated mental condition prevented him from giving notice to employer. D.C. Code 1981, § 36-313(a). Teal v. District of Columbia Dep't of Employment Services, 580 A.2d 647, 1990 D.C. App. LEXIS 228 (1990).

Department of Employment Services' Director's conclusion that prior workers' compensation carrier for employer had acquired knowledge of employee's injury within requisite 30-day period was supported by substantial evidence where insurer received medical report and statement from physician who treated employee and had begun an investigation into employee's injury and treatment during the 30-day period. D.C. Code 1981, §§ 1-1510(a)(3)(E), 36-313(a), (d)(1). Madison Hotel

v. District of Columbia Dep't of Employment Services, 512 A.2d 303, 1986 D.C. App. LEXIS 383 (1986).

§ 32-1514. Time for filing claims.

(a) Except as otherwise provided in this section, the right to compensation for disability or death under this chapter shall be barred unless a claim therefor is filed within 1 year after the injury or death. If payment of compensation has been made without an award on account of such injury or death, a claim may be filed within 1 year after the date of the last payment. Such claim shall be filed with the Mayor. The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment. Once a claim has been filed with the Mayor, no further written claims are necessary.

(b) Notwithstanding the provisions of subsection (a) of this section, failure to file a claim within the period prescribed in such subsection shall not be a bar to such right unless objection to such failure is made at the 1st hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(c) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of subsection (a) of this section shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(d) Where recovery is denied to any person, in a suit brought at law to recover damages in respect of injury or death, on the ground that such a person was an employee and that the defendant was an employer within the meaning of this chapter and that such employer had secured compensation to such employee under this chapter, the limitation of time prescribed in subsection (a) of this section shall begin to run only from the date of termination of such suit.

(July 1, 1980, D.C. Law 3-77, § 15, 27 DCR 2503.)

Section references. — This section is referred to in §§ 32-1520 and 32-1532.

Prior Codifications. — 1981 Ed., § 36-314.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

CASE NOTES

ANALYSIS

Claim.
In general.
Injury.
Laches.
Reasonable diligence.
Recurrence of disability.
Remand.
Statute of limitations.
Weight and sufficiency of evidence.

Claim.

"Claim" under District of Columbia Workers' Compensation Act means nothing more than simple requests for compensation which triggers process of claim adjudication; "claim" is not specific theory of employment causation and claimants are permitted to argue alternative theories of employment causation to make

their "claim" for compensation. D.C. Code 1981, §§ 36-314, 36-314(b), 36-320. Ferreira v. District of Columbia Dep't of Employment Services (Workers' Compensation), 531 A.2d 651, 1987 D.C. App. LEXIS 449 (1987).

In general.

Because Court of Appeals' decision in Harris I, regarding running of Workers' Compensation Act's statute of limitations, was no longer binding on agency, Director of Department of Employment Services (DOES) erred when she relied on that decision, and denied claim as untimely, without noting that decision had been vacated and explaining why she had nevertheless adopted reasoning of Harris I. D.C. Code 1981, § 36-314(a). Proctor v. District of Columbia Dep't of Empl. Servs., 737 A.2d 534, 1999 D.C. App. LEXIS 206 (1999).

Injury.

Term "injury", in section of Longshoremen's and Harbor Workers' Compensation Act requiring a claim for compensation to be filed within one year after injury, encompasses physical harm of a kind which is unknown to employee at time of accident but which is later revealed such as an occupational disease or a latent wound. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 13, 13(a), 33 U.S.C. §§ 901 et seq., 913, 913(a). Stancil v. Massey, 436 F.2d 274, 1970 U.S. App. LEXIS 6665 (C.A.D.C. 1970).

"Injury" within provision of the Longshoremen's Compensation Act that right to compensation for disability shall be barred unless a claim therefor is filed within one year after "injury" is not equivalent to "accident" but is equivalent to "compensable injury", so that limitation against claim for head injury did not begin to run until claimant became disabled or until he commenced suffering from progressive disease of the brain caused by the accident. Longshoremen's and Harbor Workers' Compensation Act Sec. 13(a), 33 U.S.C. 913(a). Potomac Electric Power Co. v. Cardillo, 107 F.2d 962, 1939 U.S. App. LEXIS 2867 (1939).

Laches.

Where, after accident, workman was in no position to investigate his rights under District of Columbia law but, rather, merely accepted lesser payments that his father, who was president and sole shareholder of corporate employer, arranged for him under Virginia law, and where workman was not informed of his rights to additional compensation under District of Columbia law until he consulted new attorney, and filed District of Columbia claim within two months later, court would not, on finding statute of limitations tolled, hold that claim was barred by equitable doctrine of laches. Longshoremen's and Harbor Workers' Compensation Act, § 30(f) as amended 33 U.S.C. § 930(f); D.C. Code §§ 36-501 et seq., 36-502; Code Va.1950, §§ 65.1-1 to 65.1-152. Director, Office of Workers' Compensation Programs, etc. v. National Van Lines, Inc., 613 F.2d 972, 1979 U.S. App. LEXIS 10555 (C.A.D.C. 1979), writ of certiorari denied by 448 U.S. 907, 100 S. Ct. 3049, 65 L. Ed. 2d 1136, 1980 U.S. LEXIS 2467, 104 L.R.R.M. (BNA) 2688 (1980).

Reasonable diligence.

Although determination of hearing examiner that claimant was aware, more than a year before filing workers' compensation claim that his injuries were work related was not supported by substantial evidence, Director of Department of Employee Services was not correct in concluding that claim was timely filed without considering alternative whether claimant should have been aware, by exercise of reasonable diligence, of relationship between injury and employment more than a year before filing claim. D.C. Code 1981, § 36-314(a). KOH Sys. v. District of Columbia Dep't of Empl. Servs., 683 A.2d 446, 1996 D.C. App. LEXIS 202 (1996).

Recurrence of disability.

Where baker's contact with flour caused dermatitis which disabled her from July, 1944 to October, 1946, during which period employer paid her compensation without claim or award, and in December, 1946, she suffered a recurrence which wholly disabled her from January, 1947, and between first attack and its recurrence there was an interval during which she did not appear to have dermatitis, compensation claim filed in November, 1947, within one year after disease recurred was timely under Longshoremen's Compensation Act providing that right to compensation is barred unless a claim therefor is filed within one year after injury or one year after last payment made without award, whether baker resumed work during interval and thereby brought about recurrence or whether baker did not resume work in which case the second attack was a consequence of the previous work that had caused the previous attack. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 2(2), 13(a), 33 U.S.C. §§ 901 et seq., 902(2), 913(a), D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note. Cadwallader v. Sholl, 196 F.2d 14, 1951 U.S. App. LEXIS 3696 (C.A.D.C. 1951).

Claimant had one year, following the time she first became aware, or should have become aware, of her new injury, a worsening of her prior symptoms from a work-related back injury, to file a new claim for compensation benefits under Workers' Compensation Act provision regarding a new claim for disability benefits for a new injury that arose from a work-related accident for which a claim had previously been filed, so long as that claim was

not barred by res judicata, and she was not limited to filing a claim for modification, which imposed a one-year limitation from either the date of the last payment of compensation or the rejection of a claim. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 981 A.2d 1216, 2009 D.C. App. LEXIS 500 (2009).

Longshoremen's Act provision, barring right to compensation for disability unless claim therefor was filed within one year after injury, barred claim for compensation for recurrence of disability where claim was filed more than one year after injury responsible for disability, even though such claim was filed within one year from date when disability recurred. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 13(a), 33 U.S.C. §§ 901 et seq., 913(a); D.C. Code 1951, § 36-501, 33 U.S.C. § 901 note. Henriot v. General Acc. Fire & Life Assur. Corp., 134 A.2d 374, 1957 D.C. App. LEXIS 271 (Cr.App. 1957).

Remand.

Absent indication that Director of Department of Employment Services (DOES) considered language of Workers' Compensation Act's one-year statute of limitations, Court of Appeals was hesitant to give Director's adoption of Court's construction of statute substantial weight, and thus, case would be remanded, and if Director decides to adopt Court's interpretation, she should make clear that it represents construction she would have embraced even if Court's decision had never been on books. D.C. Code 1981, § 36-314(a). Proctor v. District of Columbia Dep't of Empl. Servs., 737 A.2d 534, 1999 D.C. App. LEXIS 206 (1999).

Remand was required for further explanation of how workers' compensation claimant's physician's filing of medical reports with Office of Workers' Compensation, independent of any request or directive from worker, constituted filing of a bona fide claim "by the worker," as required to recover benefits. D.C. Code 1981, § 36-314(a). Allied Sec., Inc. v. District of Columbia Dep't of Employment Servs., 621 A.2d 824, 1993 D.C. App. LEXIS 53 (1993).

Statute of limitations.

One-year limitation period for workers' compensation claim did not apply to a 2003 claim for permanent partial disability (PPD) benefits in connection with 1991 accident, where claimant had made timely claim for temporary total disability (TTD) benefits after that accident. Combs v. D.C. Dep't of Empl. Servs., 983 A.2d 1004, 2009 D.C. App. LEXIS 605 (2009).

Weight and sufficiency of evidence.

Evidence supported finding that claim for compensation for injury to leg was timely filed, though not filed within one year after date of accident, where claimant's delay in filing claim was caused by erroneous medical advice that he was suffering from a thrombus or illness in the leg rather than from an accidental injury, and he filed claim within less than year after other physicians had diagnosed his trouble as an accidental injury to leg. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 13(a), 33 U.S.C. §§ 901 et seq., 913(a); D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note. Great Am. Indem. Co. v. Britton, 179 F.2d 60, 1949 U.S. App. LEXIS 3725 (C.A.D.C. 1949).

Substantial evidence supported ALJ's findings that on-duty accident resulting in workers' compensation claimant's surgery occurred in 1996, such that claim for permanent partial disability (PPD) benefits filed in 2003 was untimely, and that there was no appreciable permanent disability arising from previously compensated 1991 accident for which claimant had timely sought temporary disability benefits; PPD application claimed that injuries at issue occurred in 1996, claimant told at least three examining and treating physicians that he was injured in 1996, and he apparently changed theory as to date of injury after presumably learning that claim for 1996 accident was time-barred. Combs v. D.C. Dep't of Empl. Servs., 983 A.2d 1004, 2009 D.C. App. LEXIS 605 (2009).

§ 32-1515. Payment of compensation.

(a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

(b) The 1st installment of compensation shall become due on the 14th day after the employer has knowledge of the job-related injury or death, on which date all compensation then due shall be paid. Thereafter compensation shall be paid in installments, biweekly, except where the Mayor determines that payment in installments should be made monthly or at some other period.

(c) Upon making the 1st payment and upon suspension of payment for any cause, the employer shall immediately notify the Mayor in accordance with a

form prescribed by the Mayor that payment of compensation has begun or has been suspended, as the case may be.

(d) If the employer controverts the right to compensation he shall file with the Mayor, on or before the 14th day after he has knowledge of the alleged injury or death and its relationship to the employment, a notice in accordance with a form prescribed by the Mayor stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death and the grounds upon which the right to compensation is controverted.

(e) If any installment of compensation payable without an award is not paid within 14 days after it becomes due, as provided in subsection (b) of this section, there shall be added to such unpaid installment an amount equal to 10% thereof, which shall be paid at the same time as, but in addition to, such installment, unless notice is filed under subsection (d) of this section, or unless such nonpayment is excused by the Mayor after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(f) If any compensation, payable under the terms of an award, is not paid within 10 days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20% thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in § 32-1522 and an order staying payments has been issued by the Mayor or court. The Mayor may waive payment of the additional compensation after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(g) Within 16 days after final payment of compensation has been made, the employer shall send to the Mayor a notice, in accordance with a form prescribed by the Mayor, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the Mayor within such time the Mayor shall assess against such employer a civil penalty in the amount of $100.

(h) The Mayor: (1) May upon his own initiative at any time in a case in which payments are being made without an award; and (2) shall in any case where right to compensation is controverted, or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation or from the employer, that the right to compensation is controverted, or where payments of compensation have been stopped or suspended, make such investigations, cause such medical examinations to be made, or hold such hearings, and take such further action as he considers will properly protect the rights of all parties.

(i) Whenever the Mayor deems it advisable he may require any employer to make a deposit with the District of Columbia Treasurer to secure the prompt and convenient payment of such compensation, and payments therefrom upon any awards shall be made upon order of the Mayor.

(j) If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due. All payments prior to an award, to an employee who is injured in the course and scope of his employment, shall be considered advance payments of compensation.

(k) An injured employee, or in case of death his dependents or personal representative, shall give receipts for payment of compensation to the employer paying the same and such employer shall produce the same for inspection by the Mayor, whenever required.

(July 1, 1980, D.C. Law 3-77, § 16, 27 DCR 2503.)

Section references. — This section is referred to in §§ 32-1507 and 32-1528.

Prior Codifications. — 1981 Ed., § 36-315.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

CASE NOTES

Analysis

Change of address.
Damages.
In general.
Remand.
Review.

Change of address.

Employer received actual or constructive notice of workers' compensation claimant's current address such that employer was liable for 20% penalty payment after failing to make settlement payment to claimant within the 10-day period prescribed by law when it sent the payment to claimant's former address, even though claimant did not file an official change of address form or other notification; claimant's updated address appeared on nearly a dozen documents filed with employer or employer's attorney, including the compensation order itself, and workers' compensation law imposed no specific method by which claimant was required to file notice of a change of address. Hard Rock Cafe' v. D.C. Dep't of Empl. Servs., 911 A.2d 1217, 2006 D.C. App. LEXIS 623 (2006).

Damages.

Department of Employment Services' (DOES) Compensation Review Board acted within its discretion in declining to waive employer's failure to make timely workers' compensation settlement payment to claimant due to circumstances over which the employer "had no control," which payment was untimely because employer sent payment to claimant's former address, even though employer promptly issued a new payment after learning of the nonreceipt and the delay caused claimant no financial harm; the employer had actual and constructive notice of claimant's current address, and statute did not require that claimant suffer damage. Hard Rock Cafe' v. D.C. Dep't of Empl. Servs., 911 A.2d 1217, 2006 D.C. App. LEXIS 623 (2006).

In general.

Ten-day time limit for payment of workers' compensation benefits commenced when carrier's and employer's joint counsel received compensation order, as opposed to when order was mailed to counsel. Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs., 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

Operation of workers' compensation carrier's check processing system was not beyond carrier's control, as would give director of Department of Employment Services authority to consider mitigating circumstances and waive late payment penalty. Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs., 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

Term "paid" in provision of Workers' Compensation Act imposing late payment penalty if compensation is not paid within ten days after it becomes due means received by the claimant. Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs., 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

Employer who did not file its notice of intent to controvert employee's widow's right to workers' compensation until more than two months after employee's death was subject to 10% penalty for nonpayment. D.C. Code 1981, § 36-315(d, e). Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 716 A.2d 976, 1998 D.C. App. LEXIS 137 (1998).

Injured worker was not entitled to hearing or compensation award where self-insured employer was voluntarily paying benefits, and no material issues were disputed by parties. D.C.

Code 1981, §§ 36-301 to 36-345, 36-315(a, h), 36-320(c). Thomas v. District of Columbia Dep't of Employment Services, 547 A.2d 1034, 1988 D.C. App. LEXIS 186 (1988).

Remand.

Workers' compensation case would be remanded since employer's concessions on appeal raised new issues that were not presented to Department of Employment Services (DOES) for resolution in the first instance and since the parties did not show exceptional circumstances that would justify Court of Appeals addressing issues. Hill v. District of Columbia Dep't of Empl. Servs., 717 A.2d 909, 1998 D.C. App. LEXIS 180 (1998).

Remand was required for further explanation as to how employer could be penalized for failure to file notice of controversion after filing of workers' compensation claim where latter filing was untimely and did not constitute filing of valid claim for benefits. D.C. Code 1981, § 36-315(d, e). Allied Sec., Inc. v. District of Columbia Dep't of Employment Servs., 621 A.2d 824, 1993 D.C. App. LEXIS 53 (1993).

Review.

Court of Appeals would not address employer's argument on appeal for application of "mailbox rule," under which relevant date was date on which check was mailed, to provision of Workers' Compensation Act imposing late payment penalty, where employer and its insurance carrier did not raise argument before Department of Employment Services, and record did not contain competent evidence documenting date on which carrier in fact mailed check to claimant. Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs., 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

In denying worker's claim for temporary disability benefits under Workers' Compensation Act, Director of Department of Employment Services did not fully address legal issue as to whether sick leave payments were "advance payments of compensation" for purposes of employer's right to reimbursement out of any unpaid compensation due worker and, therefore, appellate court could not attempt to review issue without clearer exposition by agency. D.C. Code 1981, § 36-315(j). Gay v. Department of Employment Servs., 644 A.2d 1326, 1994 D.C. App. LEXIS 99 (1994).

§ 32-1516. Invalid agreements.

(a) No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter shall be valid, and any employer who makes a deduction for such purpose or any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1,000.

(b) No agreement by an employee to waive his right to compensation under this chapter shall be valid.

(July 1, 1980, D.C. Law 3-77, § 17, 27 DCR 2503.)

Section references. — This section is referred to in § 32-1508.

Prior Codifications. — 1981 Ed., § 36-316.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

CASE NOTES

ANALYSIS

Construction with other laws.
In general.
Issues of fact.

Construction with other laws.

Disclaimer signed by guard when she began working for security company, in which she waived and released any tort claims against a customer of the company arising from injuries covered by the Workers' Compensation Act (WCA), did not violate provisions in the WCA invalidating agreements to forego rights to compensation under the WCA, as the disclaimer did not purport to limit security guard's right to compensation under the WCA, and any right security guard had to file a tort action against a third party was not based on her rights under the WCA. Brown v. 1301 K St. Ltd. P'ship, 31 A.3d 902, 2011 D.C. App. LEXIS 673 (2011).

Disclaimer signed by guard when she began

working for security company, in which she waived and released any tort claims against a customer of the company arising from injuries covered by the Workers' Compensation Act (WCA), did not violate public policy; public policy was not violated when an employer chose to protect its customers from liability for workplace injuries and instead compensate its employees itself exclusively through workers' compensation, and, though guard asserted that the disclaimer limited liability for violations of Occupational Safety and Health Act (OSHA) and the District of Columbia Industrial Safety Act, OSHA and the Safety Act did not impose strict liability but rather served to establish standards of care. Brown v. 1301 K St. Ltd. P'ship, 31 A.3d 902, 2011 D.C. App. LEXIS 673 (2011).

Disclaimer signed by guard when she began working for security company, in which she waived and released any tort claims against a customer of the company arising from injuries covered by the Workers' Compensation Act (WCA), was not invalid on the ground that she signed the disclaimer along with 20 other documents, absent a showing that the parties were greatly disparate in bargaining power, that there was no opportunity for negotiation and that the services could not be obtained elsewhere. Brown v. 1301 K St. Ltd. P'ship, 31 A.3d 902, 2011 D.C. App. LEXIS 673 (2011).

Security guard's slip and fall claims against building owner and building manager were barred by disclaimer guard signed when she began working for security company, in which she waived and released any tort claims against a customer of the company arising from injuries covered by the Workers' Compensation Act (WCA), though disclaimer stated it applied to customers of acquiring security company and owner and manager were originally customers of acquired security company, where the two security companies had merged, and when guard was hired the merger was complete and the two companies were in fact a single entity. Brown v. 1301 K St. Ltd. P'ship, 31 A.3d 902, 2011 D.C. App. LEXIS 673 (2011).

In general.

This section declares invalid any agreement of an employee to waive his right to compensation, therefore the parties could not have voluntarily entered an agreement reducing the amount of benefits. Oubre v. District of Columbia Dep't of Employment Servs., 630 A.2d 699, 1993 D.C. App. LEXIS 208 (1993).

Issues of fact.

Issue of whether building owner and building manager were the same entity was not a genuine issue of material fact, when owner and manager moved for summary judgment in slip and fall action brought by security guard on the ground that the guard signed a disclaimer when she began working for security company in which she waived and released any tort claims against a customer of the company arising from injuries covered by the Workers' Compensation Act (WCA); owner and manager were so closely intertwined in their business transactions as to be essentially indistinguishable, and both were customers of the security company. Brown v. 1301 K St. Ltd. P'ship, 31 A.3d 902, 2011 D.C. App. LEXIS 673 (2011).

§ 32-1517. Assignment of compensation; exemption from claims of creditors.

No assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, shall be valid, and such compensation and benefits shall be exempt from all claims or creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

(July 1, 1980, D.C. Law 3-77, § 18, 27 DCR 2503.)

Section references. — This section is referred to in § 32-1508.

Prior Codifications. — 1981 Ed., § 36-317.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

§ 32-1518. Compensation as lien against assets.

Any person entitled to compensation under the provisions of this chapter shall have a lien against the assets of the carrier or employer for such compensation without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or employer, or both,

be entitled to preference and priority in the distribution of the assets of such carrier or employer, or both.

(July 1, 1980, D.C. Law 3-77, § 19, 27 DCR 2503.)

Section references. — This section is referred to in § 32-1519.

Prior Codifications. — 1981 Ed., § 36-318.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

§ 32-1519. Collection of defaulted payments.

(a) In case of default by the employer in the payment of compensation due under any award of compensation for a period of 30 days after the compensation is due and payable, the person to whom such compensation is payable may, within 2 years after such default, make application to the Mayor for a supplementary order declaring the amount of the default. After investigation, notice and hearing, as provided in § 32-1520, the Mayor shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the compensation order. In case the payment in default is an installment of the award the Mayor may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the Clerk of the Superior Court of the District of Columbia. Such supplementary order of the Mayor shall be final, and the Court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the Court shall otherwise direct. The Court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the Court.

(b) In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the Mayor may, in his discretion, and to the extent he shall determine advisable after consideration or current commitments payable from the special fund established in § 32-1540, make payment from such fund upon any award made under this chapter, and, in addition, provide any necessary medical, surgical, and other treatment required by § 32-1507 in any case of disability where there has been a default in furnishing medical treatment by reason of the insolvency of the employer. Such an employer shall be liable for payment into such fund of the amounts paid therefrom by the Mayor under this subsection; and for the purposes of enforcing this liability, the Mayor for the benefit of the fund shall be subrogated to all the rights of the person receiving such payment or benefits, including the right of lien and priority provided for by § 32-1518 as against the employer and may by a proceeding in the name of the Mayor under § 32-1520 or under § 32-1522(c), or both, seek to recover the amount of the default or so much thereof as in the judgment of the Mayor is possible, or the Mayor may settle and compromise any such claim.

(July 1, 1980, D.C. Law 3-77, § 20, 27 DCR 2503.)

Section references. — This section is referred to in § 32-1540.

Prior Codifications. — 1981 Ed., § 36-319.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

CASE NOTES

Construction with other laws.

Employees would "benefit" from premium payments necessary to maintain workers' compensation insurance, as term was used in Bankruptcy Code section granting priority status for contributions to employee benefit plan, even though District of Columbia statutory scheme allowed employees to seek coverage for workers' compensation directly from District government if insurance policy lapsed due to employer's default; coverage provided by government was discretionary and thus was not duplicative of insurer's coverage. Bankr.Code, 11 U.S.C. § 507(a)(4); D.C. Code 1981, § 36-319. In re Gerald T. Fenton, Inc., 178 B.R. 582, 1995 Bankr. LEXIS 249 (1995).

§ 32-1520. Procedure in respect of claims.

(a) Subject to the provisions of § 32-1514, a claim for compensation may be filed with the Mayor in accordance with regulations prescribed by the Mayor at any time after the first 3 days of disability following any injury, or at any time after death, and the Mayor shall have full power and authority to hear and determine all questions in respect of any claim.

(b) Within 10 days after such claim is filed, the Mayor shall notify the employer and any other person (other than the claimant), whom the Mayor considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer or other person, or sent to such employer or person by registered or certified mail.

(c) The Mayor shall make or cause to be made investigations of claims as he considers necessary, which may include processing the claim through a central system to give the Mayor an advisory opinion on the rate and degrees of disability. Upon application of any interested party the Mayor shall order a hearing within 90 days, unless the Mayor grants a special extension of time for the development of facts. The Mayor shall not use pre-hearing conferences to resolve workers' compensation claims. If a hearing on the claim is ordered, the Mayor shall give the claimant and other interested parties at least 10 days notice of the hearing, served personally upon the claimant and other interested parties or sent to the claimant and other interested parties by registered or certified mail. No additional information shall be submitted by the claimant or other interested parties after the date of hearing, except under unusual circumstances as determined by the Mayor. Within 20 days after a hearing is held, the Mayor shall by order reject the claim or make an award in respect of the claim based on substantial evidence before him. The Mayor shall, by order, reject the claim or make an award in respect of the claim based upon substantial evidence before him, if no hearing is ordered within 20 days after notice is given as provided in subsection (b) of this section.

(d) At such hearing the claimant and the employer may each present evidence in respect of such claim and may be represented by any person authorized in writing for such purpose.

(e) The order rejecting the claim or making the award (referred to in this chapter as a compensation order) shall be filed with the Mayor, and a copy

thereof shall be sent by registered or certified mail to the claimant and to the employer at the last known address of each.

(f) An injured employee claiming or entitled to compensation shall submit to such physical examination by a medical officer of the District of Columbia or by a duly qualified physician or panel of physicians designated or approved by the Mayor as the Mayor may require. The place or places shall be reasonably convenient for the employee. Proceedings shall be suspended and no compensation be payable for any period during which the employee may refuse to submit to examination.

(g) All medical reports submitted by the claimant or any other interested party shall become part of the record, except that the Mayor shall have the discretion to require the testimony at the hearing of any reporting physician. Copies of all medical reports submitted shall be supplied to any party upon request.

(July 1, 1980, D.C. Law 3-77, § 21, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(g), 46 DCR 891.)

Section references. — This section is referred to in §§ 32-1519, 32-1522, and 32-1524.

Prior Codifications. — 1981 Ed., § 36-320.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 12-229. — For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

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"Claim" defined.

A "workers' compensation claim" is a simple request for compensation which triggers process of claim adjudication. Renard v. District of Columbia Dep't of Employment Servs., 673 A.2d 1274, 1996 D.C. App. LEXIS 60 (1996).

"Claim" under District of Columbia Workers' Compensation Act means nothing more than simple requests for compensation which triggers process of claim adjudication; "claim" is not specific theory of employment causation and claimants are permitted to argue alternative theories of employment causation to make their "claim" for compensation. D.C. Code 1981, §§ 36-314, 36-314(b), 36-320. Ferreira v. District of Columbia Dep't of Employment Services (Workers' Compensation), 531 A.2d 651, 1987 D.C. App. LEXIS 449 (1987).

Administrative review.

In workers' compensation case, Director of Department of Employment Services is not at liberty to substitute his judgments for that of hearing examiner based on Director's favored competing body of substantial evidence. Marriott Int'l v. D.C. Dep't of Empl. Servs., 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

Because administrative law judge's (ALJ) credibility determination in favor of doctor, who conducted independent medical evaluation of workers' compensation claimant, was supported by substantial evidence, the Director of Department of Employment Services exceeded his permissible scope of review by disregarding it to come to his own conclusion drawn from an independent review of the record. Marriott Int'l v. D.C. Dep't of Empl. Servs., 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

The 30-day period, within which an application for review of a workers' compensation order must be filed with the Department of Employment Services (DOES), begins to run when the order is mailed certified to all parties, rather than when the compensation order is received by a party. D.C. Code 1981, § 36-320. Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 743 A.2d 1208, 1999 D.C. App. LEXIS 309 (1999).

Director of Department of Employment Services could not, under regulation, reverse part of a workers' compensation order based on medical evidence received after completion of initial hearing, because of employer's opposition to admission of evidence, without reviewing relevancy and materiality of such evidence. D.C. Code 1981, §§ 1-1510, 11-722, 36-320(c). Jones v. District of Columbia Dep't of Employment Services, 553 A.2d 645, 1989 D.C. App. LEXIS 11 (1989).

Award.

— In general.

Under District of Columbia law, employer's voluntary monthly compensation payments to deceased worker's personal representative did not operate as assignment to employer of all of personal representative's rights to recover damages against manufacturer of asphalt distributing machine that killed worker, even though employer had asserted lien for its payments against personal representative, where no compensation order had been filed with Mayor, no payment had been made into Mayor's special fund, and Mayor had not made determination that no one was entitled to death benefits. Jefferson v. E. D. Etnyre & Co., 300 F.Supp.2d 109, 2004 U.S. Dist. LEXIS 1304 (2004).

Final decision of ALJ to deny compensation, based on finding that workers' compensation claimant failed to offer sufficient proof of both the nature and extent of his incapacity to work as a transit authority bus driver, did not follow rationally from the factual findings that were supported by substantial evidence; the ALJ found facts that identified the nature of the incapacity, and the only conclusion that flowed rationally from the facts that were found was that the nature of claimant's disability was chronic pain in his back and wrist that eventually resolved and chronic pain in his right knee that continued throughout the course of both periods for which he claimed temporary total disability. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

Hearing examiner's order that worker's temporary total disability ended on certain date complied with three-part test set forth in regulations requiring that decision state findings of fact on each material, contested factual issue that, those findings be based on substantial evidence, and that conclusions of law follow rationally from findings; contested issues related to length of time worker was disabled due to injury, and substantial evidence offered by doctors who were fully apprised of worker's relevant medical history supported hearing examiner's conclusion. George Hyman Constr. Co. v. District of Columbia Dep't of Employment Services, 498 A.2d 563, 1985 D.C. App. LEXIS 503 (1985).

— Time for making or rendition, award.

The limitation in Longshoremen's and Harbor Workers' Compensation Act providing that deputy commissioner "shall within twenty days after such hearing is had, by order, reject the claim or make an award in respect of the claim," is directory and not mandatory or jurisdictional. Longshoremen's and Harbor Workers' Compensation Act § 19, 33 U.S.C. § 919. Maryland Casualty Co. v. Cardillo, 99 F.2d 432, 1938 U.S. App. LEXIS 2892 (1938).

Time limit of D.C. Code 1981, § 36-320, which requires that decision be rendered within 20 days of workers' compensation hearing, is directory rather than mandatory. Hughes v. District of Columbia Dep't of Employment Services, 498 A.2d 567, 1985 D.C. App. LEXIS 504 (1985).

Conclusiveness and effect.

Original workers' compensation order that ruled claimant was not entitled to a schedule award for a permanent partial disability to her leg was manifest error, and thus, res judicata did not preclude claimant from seeking a modification of that order, where claimant's physician attributed a 15 percent disability rating to claimant's knee and ankle. Walden v. District of Columbia Dep't of Empl. Servs., 759 A.2d 186, 2000 D.C. App. LEXIS 217 (2000).

Trial court did not abuse its discretion by refusing to apply the doctrine of offensive collateral estoppel to give preclusive effect to Department of Employment Services' (DOES) findings in employee's workers' compensation action with respect to subsequent wrongful death and survival action brought against District of Columbia by public school employee, who alleged that she slipped and fell on icy sidewalk in front of school and subsequently gave birth to premature child who died shortly thereafter. Newell v. District of Columbia, 741 A.2d 28, 1999 D.C. App. LEXIS 271 (1999).

That a workers' compensation claimant's current symptoms may be similar to those litigated in a prior proceeding does not invoke the doctrine collateral estoppel when they are not identical. Short v. Department of Empl. Servs., 723 A.2d 845, 1998 D.C. App. LEXIS 221 (1998).

Determination of administrative law judge in workers' compensation proceeding that employee was not discharged because he filed compensation claim had collateral estoppel effect and barred employee's action against employer for wrongful discharge. Jordan v. Washington Metropolitan Area Transit Authority, 548 A.2d 792, 1988 D.C. App. LEXIS 178 (1988).

Due process.

Employer's due process rights were not violated by new rule, established by individual adjudication, that the 30-day period within which an application for review of a workers' compensation order must be filed with the Department of Employment Services (DOES) began to run when the order was mailed certified to all parties, even if employer did not have access to the decision four months after adjudication was decided, where the workers' compensation order clearly informed employer that the application for review "must be filed within thirty days of the date of the order." U.S. Const.Amend. 14; D.C. Code 1981, § 36-320. Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 743 A.2d 1208, 1999 D.C. App. LEXIS 309 (1999).

Findings.

— Form, contents, and sufficiency, findings.

While a hearing examiner may reject the testimony of a treating physician in a worker's compensation case and decide to credit the testimony of another physician when there is conflicting medical evidence, the agency must give reasons for such a rejection. White v. D.C. Dep't of Empl. Servs., 793 A.2d 1255, 2002 D.C. App. LEXIS 63 (2002).

Hearing examiner's statement that "any medical evidence" which supported the disability claim relating to claimant's employment by a newspaper was undermined by claimant's continued employment with a cable-installation employer was insufficiently specific to explain her reasons for rejecting the treating physician's deposition testimony that claimant had been unable to return to work with the newspaper. Upchurch v. D.C. Dep't of Empl. Servs., 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

When making her factual findings in workers' compensation cases, the hearing examiner, as trier of fact, is entitled to draw reasonable inferences from the evidence presented. Muhammad v. District of Columbia Dep't of Empl. Servs., 774 A.2d 1107, 2001 D.C. App. LEXIS 171 (2001).

Utilization review report presented to Department of Employment Services (DOES) that concludes that surgery performed on workers' compensation claimant was unreasonable requires DOES to specifically address report and articulate reasons why report is being rejected. Sibley Mem. Hosp. v. District of Columbia Dep't of Empl. Servs., 711 A.2d 105, 1998 D.C. App. LEXIS 93 (1998).

In determining sufficiency of workers' compensation hearing examiner's findings, Court of Appeals examines whether findings are detailed enough to allow reviewing court to conclude that decision followed rationally from findings of fact. Sturgis v. District of Columbia Dep't of Employment Servs., 629 A.2d 547, 1993 D.C. App. LEXIS 188 (1993).

Hearing examiner clearly applied appropriate objective, average worker test to determine whether claimant's depression had been causally related to work injuries, even if hearing examiner did not expressly state that issue was whether claimant had been involved in incident or experience representing significant stressor that would have affected anyone who was not predisposed to depressive reaction; hearing examiner determined that work-related injury would not have caused emotional injuries to person who lacked claimant's subjective, preexisting personality disorder. D.C. Code 1981, § 36-301 et seq. Porter v. District of Columbia Dep't of Employment Servs., 625 A.2d 886, 1993 D.C. App. LEXIS 128 (1993).

— In general.

When confronted with case of admitted work-related medical disability and uncontroverted evidence indicating reduction in claimant's ability to perform at his pre-injury level, ALJ, in considering claim for benefits under Longshoremen's and Harbor Workers' Compensation Act, must consider and make explicit findings on all relevant factors in wage-earning capacity formula, and may issue decision in opposition to uncontroverted evidence on record only after expressly providing good reasons for rejecting that evidence. Longshoremen's and Harbor Workers' Compensation Act, § 8(h), as amended, 33 U.S.C. § 908(h). Randall v. Comfort Control, Inc., 725 F.2d 791, 1984 U.S. App. LEXIS 26157 (C.A.D.C. 1984).

Deputy commissioner's findings were inadequate to support his ultimate inference that carpet layer's work did not aggravate the condition disclosed by rupture of brain aneurysm. Longshoremen's and Harbor Workers' Compensation Act, § 2, 33 U.S.C. § 902. Howell v. Einbinder, 350 F.2d 442, 1965 U.S. App. LEXIS 4702 (C.A.D.C. 1965).

Finding by deputy commissioner in proceeding under Longshoremen's Compensation Act that the employment was responsible for fatal assault on employee was equivalent to a finding that the injury was "caused by the willful act of a third person directed against an employee because of his employment" within provision of act making such injury compensable.

Longshoremen's and Harbor Workers' Compensation Act § 2(2), 33 U.S.C. § 902(2); D.C. Code 1929, T. 19, § 11, 33 U.S.C. § 901 et seq. Penker Const. Co. v. Cardillo, 118 F.2d 14, 1941 U.S. App. LEXIS 4673 (1941).

Administrative law judge (ALJ) failed, without any explanation, to make a finding with respect to the principal factual allegation on which claimant had relied in support of her workers' compensation claim, when ALJ held that claimant, a professional basketball player, had failed to present any evidence of an ascertainable wage loss during the off-season, but did not address or even mention wage loss claimed by claimant as a result of her injury, namely, the opportunity to play professional basketball in Turkey during the off-season. Mills v. D.C. Dep't of Empl. Servs., 838 A.2d 325, 2003 D.C. App. LEXIS 751 (2003).

A workers' compensation hearing examiner need not specify why it credits one opinion over another, but when a party questions the fundamental factual bases for an expert opinion, the hearing examiner must offer some explanation for why the expert's conclusions are nonetheless credible. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

Ordinarily, the workers' compensation hearing examiner is not required to explain why she credited one expert over another. Washington Metro. Area Transit Auth. v. State Dep't of Empl. Servs., 770 A.2d 965, 2001 D.C. App. LEXIS 84 (2001).

Hearing examiner was required to make findings as to the time (and, consequently, the place) and manner of the injury for purposes of determining whether claimant's injury was within coverage of the Workers' Compensation Act. D.C. Code 1981, § 36-303. King v. District of Columbia Dep't of Empl. Servs., 742 A.2d 460, 1999 D.C. App. LEXIS 285 (1999).

Hearing examiner in workers' compensation proceeding could reasonably infer that temporary 20-pound restriction on lifting, imposed by examining physician, was not related to work injury, in light of physician's conclusion that claimant's work-related injury had healed. Washington Vista Hotel v. Department of Empl. Servs., 721 A.2d 574, 1998 D.C. App. LEXIS 218 (1998).

Department of Employment Services (DOES) hearing examiner's conclusion of continuing temporary total disability could not be reconciled with examiner's other finding that workers' compensation claimant was able to return to work with specified restrictions, and because of this internal inconsistency, Court of Appeals was unable to perform its review for substantial evidence, specifically, to determine whether conclusion of disability followed rationally from examiner's findings. George Washington Univ. Med. Ctr. v. District of Columbia Dep't of Empl. Servs., 704 A.2d 1194, 1997 D.C. App. LEXIS 254 (1997).

Workers' compensation hearing examiner's decision to credit factual content of claimant's testimony that she was harassed did not bind examiner to conclude that things that happened to claimant constituted harassment. D.C. Code 1981, §§ 36-301 to 36-345. Sturgis v. District of Columbia Dep't of Employment Servs., 629 A.2d 547, 1993 D.C. App. LEXIS 188 (1993).

Hearing examiner's finding in workers' compensation benefits claim hearing that doctors who knew worker's relevant medical history were more credible than those doctors who had not been told medical history by worker was not unreasonable. George Hyman Constr. Co. v. District of Columbia Dep't of Employment Services, 498 A.2d 563, 1985 D.C. App. LEXIS 503 (1985).

— Necessity, findings.

A finding that injury or death was one arising out of and in course of employment is essential to an award of compensation under the District of Columbia Workmen's Compensation Act. Longshoremen's and Harbor Workers' Compensation Act, § 2(2), 33 U.S.C. § 902(2); D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note. Cardillo v. Liberty Mut. Ins. Co., 67 S.Ct. 801, 1947 U.S. LEXIS 2874 (U.S.Dist.Col. 1947).

In compensation case deputy commissioner is required by statute and regulations to make specific findings based on testimony introduced. Wimmer v. Hoage, 90 F.2d 373, 1937 U.S. App. LEXIS 3820 (1937).

Though a hearing examiner may reject the testimony of a treating physician in a workers' compensation proceeding, the hearing examiner must give reasons for doing so. Upchurch v. D.C. Dep't of Empl. Servs., 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

In workers' compensation cases, Department of Employment Services (DOES) must make findings on the pivotal facts at issue, which are then accorded great deference on review. Pro-Football, Inc. v. District of Columbia Dep't of Empl. Servs., 782 A.2d 735, 2001 D.C. App. LEXIS 217 (2001).

While it is not an error for the hearing examiner to fail to make specific findings of credibility in the workers' compensation order, it is the better practice to do so. Short v. Department of Empl. Servs., 723 A.2d 845, 1998 D.C. App. LEXIS 221 (1998).

Agency is required to make basic findings of fact on all material issues, in workers' compensation proceeding. D.C. Code 1981, § 36-301 et seq. Brown v. District of Columbia Dep't of Empl. Servs., 700 A.2d 787, 1997 D.C. App. LEXIS 229 (1997).

In general.

Procedures for securing payment of claims under Workers' Compensation Act are flexible

and informal. D.C. Code 1981, §§ 36-301 to 36-345. Oubre v. District of Columbia Dep't of Employment Servs., 630 A.2d 699, 1993 D.C. App. LEXIS 208 (1993).

Injured worker was not entitled to hearing or compensation award where self-insured employer was voluntarily paying benefits, and no material issues were disputed by parties. D.C. Code 1981, §§ 36-301 to 36-345, 36-315(a, h), 36-320(c). Thomas v. District of Columbia Dep't of Employment Services, 547 A.2d 1034, 1988 D.C. App. LEXIS 186 (1988).

Worker was not entitled to evidentiary hearing to determine whether there was sufficient evidence showing that change of condition had occurred after denial of workers' compensation benefits to worker entitling worker to further benefit payments; director of Department of Employment Services concluded that preliminary hearing given to worker was rational means of reaching determination of whether there was sufficient evidence that change of condition had occurred, and worker's right to evidentiary hearing is triggered only when there is reason to believe that change of conditions has occurred. D.C. Code 1981, §§ 36-320, 36-324. Snipes v. District of Columbia Dep't of Employment Services, 542 A.2d 832, 1988 D.C. App. LEXIS 87 (1988).

Judicial review.

Thirty-day period for filing by workers' compensation claimant of application for review of disability order denying his claim for workers' compensation benefits began running on date compensation order was certified as having been mailed to parties, rather than on date claimant received compensation order, and thus claimant's application for review, filed more than 30 days after date order was mailed to claimant, was untimely. Thompson v. D.C. Dep't of Empl. Servs., 848 A.2d 593, 2004 D.C. App. LEXIS 203 (2004).

Any error arising from notice of hearing on workers' compensation claim sent to employer and carrier by Department of Public Services was harmless, where employer and carrier had almost two months' actual notice of hearing and fully participated in it. D.C. Code 1981, § 36-320(c). Regional Constr. Co. v. District of Columbia Dep't of Employment Services, 600 A.2d 1077, 1991 D.C. App. LEXIS 339 (1991), writ of certiorari denied by 505 U.S. 1206, 112 S. Ct. 2997, 120 L. Ed. 2d 873, 1992 U.S. LEXIS 3767, 60 U.S.L.W. 3858 (1992).

Objection that order of the Director of Department of Employment Services denying employee compensation for on-the-job injury was invalid because it violated provisions of D.C. Code 1981, § 36-320, which requires that decision be rendered within 20 days of workers' compensation hearing, did not need to be considered by the Court of Appeals, where employee had not raised the objection in the administrative proceeding. Hughes v. District of Columbia Dep't of Employment Services, 498 A.2d 567, 1985 D.C. App. LEXIS 504 (1985).

Matters considered at hearing.

Hearing examiner was not precluded from accepting documents belatedly introduced by claimant on whether Nicaragua would civilly recognize a religious marital ceremony involving claimant and her boyfriend, given that only document of significance was one demonstrating that no record of a marriage between claimant and her boyfriend had been found in the book of marriages maintained by the relevant Nicaragua court, and that petitioners offered no contrary evidence that the certificate of the religious union had been recorded as required by Nicaragua law. Hudson Trail Outfitters v. District of Columbia Dep't of Empl. Servs., 801 A.2d 987, 2002 D.C. App. LEXIS 368 (2002).

Whether an individual is a special employee under workers' compensation generally is a question of fact; however, special employment status may be made as a matter of law where the particular, undisputed critical facts compel that conclusion and present no triable issue of fact. Union Light & Power Co. v. D.C. Dep't of Empl. Servs., 796 A.2d 665, 2002 D.C. App. LEXIS 85 (2002).

Hearing examiner is required to view causal connection between workers' compensation claimant's present disability and job-related injury through lens, as it were, of statutory presumption, unless employer has rebutted presumption by evidence specific and comprehensive enough to sever potential connection between the two. Davis-Dodson v. District of Columbia Dep't of Empl. Servs., 697 A.2d 1214, 1997 D.C. App. LEXIS 181 (1997).

No unusual circumstances existed to justify keeping record open for statement from employee's physician to explain what he thought about magnetic resonance imaging and why he selected it, where record contained physician's previous explanation of why he ordered examination. D.C. Code 1981, § 36-320(c). King v. District of Columbia Dep't of Empl. Servs., 560 A.2d 1067, 1989 D.C. App. LEXIS 123 (1989).

Hearing examiner was obligated to at least consider issue of whether workers' compensation claimant experienced work-related disability due to back strain, and improperly decided not to consider that issue on grounds the issue was not properly raised, the record on the issue was not developed, and the employer did not address the issue; issue of back strain was raised in posthearing memorandum which hearing examiner had explained would be in nature of written closing arguments, neurosurgeon's testimony provided evidentiary foundations sufficient to make back strain a contested issue, and the back strain issue was raised

before close of the record. D.C. Code 1981, §§ 36-301 to 36-345. Davis v. District of Columbia Dep't of Employment Services, 542 A.2d 815, 1988 D.C. App. LEXIS 70 (1988).

Department of Employment Services was required to consider alternative work-related causes of workers' severe cervical spine disability after rejecting her contention that injury occurred on specific date. D.C. Code 1981, §§ 36-314, 36-320(c). Ferreira v. District of Columbia Dep't of Employment Services (Workers' Compensation), 531 A.2d 651, 1987 D.C. App. LEXIS 449 (1987).

Notice to attorney.

Mailing of notice of workers' compensation order by Department of Employment Services to employer's counsel of record, who represented employer in proceedings before Department, was equivalent of mailing notice to employer. D.C. Code 1981, § 36-320(e). Greenwood's Transfer & Storage Co., Inc. v. District of Columbia Dept. of Employment Services, 553 A.2d 1246, 1989 D.C. App. LEXIS 25 (1989).

Reopening hearing.

An order rejecting a claim for compensation is a "compensation order" within statute providing procedure for setting aside compensation order. Longshoremen's and Harbor Workers' Compensation Act §§ 19(e), 21(d), 33 U.S.C. §§ 919(e), 921(d). Maryland Casualty Co. v. Cardillo, 99 F.2d 432, 1938 U.S. App. LEXIS 2892 (1938).

Employee who did not institute proceedings to suspend or set aside deputy commissioner's compensation award within thirty days after award was made, nor within thirty days after order dismissing claim for modification of award held not entitled to maintain suit to set award aside and for an additional award under principles of equity, since employee's right was of statutory origin, and court could not revive a claim barred by statute. D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note; Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 21(a, b), 22, 33 U.S.C. §§ 901 et seq., 921(a, b), 922. Shugard v. Hoage, 89 F.2d 796, 1937 U.S. App. LEXIS 3590 (1937).

Employer and carrier failed to demonstrate any unusual circumstances and, therefore, hearing examiner's refusal to reopen record in workers' compensation proceeding to take additional testimony was neither arbitrary nor capricious, nor an abuse of discretion, nor contrary to law; although employer and carrier claimed they were surprised to learn at hearing of specific nature of vulgarities to which claimant was subjected, employer and carrier had ample opportunity through preliminary discovery to probe any unresolved or murky questions of fact they had. D.C. Code 1981, § 36-320(c). Charles P. Young Co. v. District of Columbia Dep't of Empl. Servs., 681 A.2d 451, 1996 D.C. App. LEXIS 153 (1996).

Because workers' compensation claimant failed to demonstrate any unusual circumstances justifying his failure to introduce evidence at hearing, director of Department of Employment Services properly reversed hearing examiner's order relying on the evidence which was improperly admitted posthearing. D.C. Code 1981, § 36-320(c). Jones v. District of Columbia Dep't of Employment Services, 584 A.2d 17, 1990 D.C. App. LEXIS 318 (1990).

Statute governing reopening of evidentiary hearings in workers' compensation cases requires showing of unusual circumstances before hearing examiner may receive posthearing evidence despite District of Columbia Department of Employment Services' regulation governing reopening of evidentiary hearings. D.C. Code 1981, § 36-320(c). Jones v. District of Columbia Dep't of Employment Services, 584 A.2d 17, 1990 D.C. App. LEXIS 318 (1990).

Weight and sufficiency of evidence.

— In general.

Awards of compensation under Longshoremen's and Harbor Workers' Compensation Act need not be supported by eyewitness testimony. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq. Associated General Contractors of America v. Cardillo, 106 F.2d 327, 1939 U.S. App. LEXIS 4706 (1939).

Substantial evidence supported the administrative law judge's (ALJ) determination that workers' compensation claimant was not entitled to benefits for his post-traumatic stress disorder (PTSD); the ALJ found that employer rebutted the presumption of compensability with witness testimony that claimant was not visibly upset or shaken when employer required claimant to go for drug and alcohol testing, and physician's medical opinion that claimant did not suffer from PTSD as a result of the events, and claimant could not establish that the incident caused his psychological injury since he returned to work after the incident, he worked full time, he conducted his duties without incident after he returned to work, and he "acted normal." Ramey v. D.C. Dep't of Empl. Servs., 997 A.2d 694, 2010 D.C. App. LEXIS 348 (2010).

Claimant, a professional basketball player, who sought temporary total disability benefits related to lost employment during the off-season, presented substantial evidence that could form basis for a finding of a wage loss resulting from her "on the job" wrist injury; Turkish basketball team paid claimant $50,000 for her play during the ensuing off-season, and, as a

number two draft pick, claimant plainly had much to offer to the Turkish club. Mills v. D.C. Dep't of Empl. Servs., 838 A.2d 325, 2003 D.C. App. LEXIS 751 (2003).

Department of Employment Services' decision awarding workers' compensation benefits to claimant did not flow rationally from the facts and was not supported by substantial evidence; hearing examiner rejected doctor's testimony concerning damage to claimant's cervical discs, but accepted doctor's opinion that the head and shoulder impact of work collision caused headaches, which in turn disabled claimant from resuming employment, and doctor specifically rejected any post-concussion basis and instead relied solely on theory that there was damage to the C6 spine area, causing muscle spasms which caused the headaches, and no other physician supported this theory. Lincoln Hockey, LLC v. D.C. Dep't of Empl. Servs., 831 A.2d 913, 2003 D.C. App. LEXIS 552 (2003).

Hearing examiner's determination that claimant did not suffer a rateable impairment for carpal tunnel syndrome of his right hand based on grip weakness was not supported by substantial evidence; fact that physical therapy report indicated claimant was more concerned with pain than with grip weakness did not mean that grip weakness could not form the basis for any permanent partial disability award, and claimant's doctor found significant impairment as a result of grip weakness. Muhammad v. District of Columbia Dep't of Empl. Servs., 774 A.2d 1107, 2001 D.C. App. LEXIS 171 (2001).

Hearing examiner's determination that claimant did not suffer a rateable impairment for carpal tunnel syndrome of the right hand was not supported by substantial evidence, even if grip weakness could not form the basis for an award; evidence indicated that claimant suffered from pain, tingling, reduced coordination, and general dysfunction of his right hand and arm, and hearing examiner did not address the relevance of those symptoms and did not determine if claimant suffered a rateable impairment through them. Muhammad v. District of Columbia Dep't of Empl. Servs., 774 A.2d 1107, 2001 D.C. App. LEXIS 171 (2001).

Substantial evidence supported hearing examiner's finding that claimant presented new evidence of a deterioration in his mental condition that demonstrated the existence of a work-related disability; claimant's medical expert testified that although claimant may have suffered from post-traumatic stress disorder immediately following a work-related electrical shock, those symptoms abated, and claimant was currently suffering from progressively worsening personality change and mood disorder caused by organic brain damage. Washington Metro. Area Transit Auth. v. State Dep't of Empl. Servs., 770 A.2d 965, 2001 D.C. App. LEXIS 84 (2001).

Workers' compensation hearing examiner's conclusion that claimant's complaints of neck and shoulder pain were result of her degenerative cervical and lumbar disc disease, and not casually related to employment was supported by substantial evidence in the record; record showed that claimant had continuously complained of neck and shoulder pain long before alleged employment accident, and doctor testified that claimant's condition was gradual degenerative process. Ferreira v. District of Columbia Dep't of Employment Servs., 667 A.2d 310, 1995 D.C. App. LEXIS 192 (1995).

— Opinion evidence, weight and sufficiency of evidence.

Treating physician preference, applied in workers' compensation cases, and under which medical opinion of treating physician is given greater weight than opinions of doctors retained to examine workers' compensation claimant solely for purpose of litigation, is applicable to disability benefits cases brought by public employees under Comprehensive Merit Personnel Act (CMPA); preference is unrelated to Workers' Compensation Act's presumption of compensability, claims under CMPA are not less adversarial than workers' compensation claims, and preference is commonly applied at administrative level in cases arising under CMPA. Kralick v. D.C. Dep't of Empl. Servs., 842 A.2d 705, 2004 D.C. App. LEXIS 57 (2004).

In workers' compensation cases, medical opinion of treating physician is generally entitled to greater weight than opinions of doctors who have been retained to examine claimant solely for purpose of litigation; although hearing officer remains free to reject testimony of treating physician, he cannot do so without explicitly addressing that testimony and explaining why it is being rejected. Kralick v. D.C. Dep't of Empl. Servs., 842 A.2d 705, 2004 D.C. App. LEXIS 57 (2004).

Rejection by hearing officer and Director of Department of Employment Security (DOES) of testimony of public employee's treating physician was based on incorrect factual premise that treating physician's opinion was not most recent opinion, and thus treating physician's opinion was entitled to preference over opinions of physicians retained to examine employee solely for litigation purposes, in action by public employee seeking review of termination of temporary total disability benefits paid under Comprehensive Merit Personnel Act (CMPA); record showed treating physician had examined employee on same day, or earlier, than other physicians. Kralick v. D.C. Dep't of Empl. Servs., 842 A.2d 705, 2004 D.C. App. LEXIS 57 (2004).

Except in the case of treating physicians, the hearing examiner in workers' compensation case is not required to give reasons for rejecting medical evidence of one party that conflicts with medical evidence presented by another party. Marriott Int'l v. D.C. Dep't of Empl. Servs., 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

In contesting the credibility or weight of a treating physician's opinion in workers' compensation case, the employer has the opportunity, before the hearing examiner, to question the factual foundation of the doctor's opinion, suggest that the doctor is unaware of the employee's medical history or otherwise challenge the factual basis of the treating physician's opinion, and the hearing examiner takes such a challenge, in addition to competing medical opinions, into account when assessing the medical evidence and addressing whether the treating physician's opinion should be controlling. Lincoln Hockey, LLC v. D.C. Dep't of Empl. Servs., 831 A.2d 913, 2003 D.C. App. LEXIS 552 (2003).

In assessing the weight of competing medical testimony in worker compensation cases, attending physicians are ordinarily preferred as witnesses to those doctors who have been retained to examine the claimant solely for purposes of litigation. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 827 A.2d 35, 2003 D.C. App. LEXIS 422 (2003).

Where conflicting medical testimony exists in workers' compensation case, an agency must take into account the testimony of a treating physician, but the hearing examiner, as judge of the credibility of witnesses, may reject the testimony of a treating physician and decide to credit the testimony of another physician when there is conflicting evidence. Mexicano v. D.C. Dep't of Empl. Servs., 806 A.2d 198, 2002 D.C. App. LEXIS 517 (2002).

Although the opinion of a treating physician is ordinarily entitled to significant weight in workers' compensation case, a hearing examiner may discount a treating physician's opinion if the examiner sets forth specific and legitimate reasons for doing so. Mexicano v. D.C. Dep't of Empl. Servs., 806 A.2d 198, 2002 D.C. App. LEXIS 517 (2002).

An employer need not introduce its own medical experts in every workers' compensation case, but, rather, may rely on the opinion of the claimant's physician. Sibley Mem. Hosp. v. D.C. Dep't of Empl. Servs., 805 A.2d 974, 2002 D.C. App. LEXIS 501 (2002).

A treating physician's medical opinion is preferred in workers' compensation proceedings over that of physicians retained for litigation purposes. Upchurch v. D.C. Dep't of Empl. Servs., 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

In weighing conflicting medical testimony presented in a workers' compensation case, the hearing examiner may credit the testimony of a non-treating physician over that of a treating physician; however, the examiner must explain his decision to credit the one opinion over the other. Pro-Football, Inc. v. District of Columbia Dep't of Empl. Servs., 782 A.2d 735, 2001 D.C. App. LEXIS 217 (2001).

General rule is that an agency need not specify why it credits the testimony of one witness over another, but there are exceptions; one of those exceptions exists in workers' compensation cases involving conflicting expert medical opinions between a treating physician and a non-treating physician. Pro-Football, Inc. v. District of Columbia Dep't of Empl. Servs., 782 A.2d 735, 2001 D.C. App. LEXIS 217 (2001).

In workers' compensation cases, there is a preference accorded the testimony of a treating physician over a physician retained for purposes of the litigation. Pro-Football, Inc. v. District of Columbia Dep't of Empl. Servs., 782 A.2d 735, 2001 D.C. App. LEXIS 217 (2001).

In workers' compensation proceedings, the testimony of a treating physician is ordinarily preferred over that of a physician retained solely for litigation purposes; the hearing examiner, however, acts as the judge of credibility, and may reject the testimony of a treating physician due to conflicting evidence. Harris v. District of Columbia Dep't of Empl. Servs., 746 A.2d 297, 2000 D.C. App. LEXIS 27 (2000).

Substantial evidence supported hearing examiner's factual finding that doctor was unaware that workers' compensation claimant had suffered Achilles tendinitis prior to her work injury and, thus, did not have complete medical history when he attributed tendinitis to claimant's work injury; claimant admitted that she had not provided her complete medical history to either the physical therapist or doctor. Olson v. District of Columbia Dep't of Empl. Servs., 736 A.2d 1032, 1999 D.C. App. LEXIS 202 (1999).

Although opinion of treating physician is ordinarily entitled to significant weight in workers' compensation case, hearing examiner may discount treating physician's opinion if examiner sets forth specific and legitimate reasons for doing so. Olson v. District of Columbia Dep't of Empl. Servs., 736 A.2d 1032, 1999 D.C. App. LEXIS 202 (1999).

Although treating physician's opinion is due special weight in workers' compensation case and may not be rejected without a reasonable explanation, even a treating physician's opinion cannot be exclusively relied upon, without explanation, where there are conflicting reports by other physicians. Olson v. District of Columbia Dep't of Empl. Servs., 736 A.2d 1032, 1999 D.C. App. LEXIS 202 (1999).

In workers' compensation proceedings, there is a preference for the testimony of treating physicians over doctors retained for litigation purposes. Short v. Department of Empl. Servs., 723 A.2d 845, 1998 D.C. App. LEXIS 221 (1998).

Even with preference accorded testimony of treating physicians, hearing examiner in workers' compensation proceeding may choose to credit the testimony of a nontreating physician over a treating physician. Short v. Department of Empl. Servs., 723 A.2d 845, 1998 D.C. App. LEXIS 221 (1998).

If employer referred workers' compensation claimant to treating physician, then testimony given by physician would constitute an admission by an agent of the employer acting within the scope of his agency, and should be given considerable weight. Short v. Department of Empl. Servs., 723 A.2d 845, 1998 D.C. App. LEXIS 221 (1998).

§ 32-1521. Presumptions.

In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of evidence to the contrary:

(1) That the claim comes within the provisions of this chapter;

(2) That sufficient notice of such claim has been given;

(3) That the injury was not occasioned solely by the intoxication of the injured employee; and

(4) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.

(July 1, 1980, D.C. Law 3-77, § 22, 27 DCR 2503.)

Prior Codifications. — 1981 Ed., § 36-321.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

CASE NOTES

ANALYSIS

Burden of proof.
Claims coming within the provisions of chapter—In general.
—Amount of disability, claims coming within the provisions of chapter.
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—Injuries on premises, claims coming within the provisions of chapter.
—Resolution of doubts, claims coming within the provisions of chapter.
Construction with other laws.
In general.
Intoxication and malice.
Judicial review.
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Psychological injury.
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Shifting of burden.
Weight and sufficiency of evidence.

Burden of proof.

There was substantial evidence that public employer failed to rebut presumption that excessive heat at employer's transit station exacerbated symptoms of workers' compensation claimant's asthma and rendered him temporarily disabled; both employee's treating physician, and the independent medical examiner (IME) opined that employee suffered from asthma and that he should avoid extremely hot and humid conditions, the air conditioning system malfunctioned on day employee reported feeling dizzy, faint, very weak, and had difficulty breathing, and employer's logs contained no temperature reading for day employee became ill. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 992 A.2d 1276, 2010 D.C. App. LEXIS 199 (2010).

Notwithstanding the statutory presumption that a claim comes within the provisions of the Workers' Compensation Act (WCA), the burden ultimately falls on a claimant to show by a preponderance of the evidence that his or her disability was caused by a work-related injury. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

Once the statutory presumption that a claim comes within the provisions of the Workers' Compensation Act (WCA) is triggered, the burden is upon the employer to bring forth substantial evidence showing that the death or disability did not arise out of and in the course

of employment. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

To benefit from the statutory presumption that a claim comes within the provisions of the Workers' Compensation Act (WCA), a claimant needs to make some initial demonstration of the employment connection of the disability; the initial demonstration consists in providing some evidence of the existence of two basic facts, specifically, a death or disability and a work-related event, activity, or requirement that has the potential of resulting in or contributing to the death or disability. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

A workers' compensation claimant has the burden of proving the extent of his or her disability by a preponderance of the evidence. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

Workers' compensation claimant was not obliged to present expert opinion of causation in order to enjoy the benefit of the presumption that his claim came within the provisions of the Workers' Compensation Act; it was not his burden to do that unless and until the employer presented sufficient evidence to rebut the presumed causal connection. McNeal v. D.C. Dep't of Empl. Servs., 917 A.2d 652, 2007 D.C. App. LEXIS 82 (2007).

Once the presumption that a claim comes within the provisions of the Workers' Compensation Act is triggered, the burden is upon the employer to bring forth substantial evidence showing that death or disability did not arise out of and in the course of employment. McNeal v. D.C. Dep't of Empl. Servs., 917 A.2d 652, 2007 D.C. App. LEXIS 82 (2007).

To benefit from the presumption that a claim comes within the provisions of the Workers' Compensation Act, a claimant must make an initial demonstration of two basic facts: (1) a death or disability, and (2) a work-related event, activity, or requirement which has the potential of resulting in or contributing to the death or disability; if the claimant makes this initial showing, the presumption then operates to establish a causal connection between the disability and the work-related event, activity, or requirement. McNeal v. D.C. Dep't of Empl. Servs., 917 A.2d 652, 2007 D.C. App. LEXIS 82 (2007).

In order to benefit from the presumption of coverage under the Workers' Compensation Act, a claimant must present some evidence of a work-related event, activity, or requirement which has the potential of resulting in a disability. Burge v. D.C. Dep't of Empl. Servs., 842 A.2d 661, 2004 D.C. App. LEXIS 53 (2004).

To invoke presumption that a claim comes within the purview of Workers' Compensation Act, a party must make some initial demonstration of (1) an injury; and (2) a work related event, activity, or requirement which has the potential of resulting in or contributing to the injury; thus, to establish a right to compensation before the agency, claimant must introduce evidence of both an injury and a relationship between that injury and the employment. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

Although hearing examiner properly required workers' compensation claimant seeking permanent total disability benefits to show that his condition had reached maximum medical improvement and that he was unable to return to his usual, or to any other, employment as result of injury, examiner should have clarified that any other employment did not include services so limited in quality, dependability, or quantity that reasonably stable market for them did not exist. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

Total disability does not mean absolute helplessness, and workers' compensation claimant need not show that he is no longer able to do any work at all; instead, claimant who is so injured that he can perform no services other than those which are so limited in quality, dependability, or quantity that reasonably stable market for them does not exist may well be classified as totally disabled. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

In challenging legitimacy of employer's evidence of suitable job availability, workers' compensation claimant seeking total disability benefits is not required to show that he tried to get identical jobs employer showed were available; claimant must merely show that he was reasonably diligent in attempting to secure job within compass of employment opportunities shown by employer to be reasonably attainable and available. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

Although it is enough for employer opposing permanent total disability benefits claim to show that range of jobs existed that were reasonably available and that workers' compensation claimant could realistically secure and perform, this showing must be specific enough to show compatibility between claimant's actual skills and limitations and duties of proffered jobs. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

A person seeking to establish a special employment status under workers' compensation must overcome the presumption favoring con-

tinuance of general employment. Union Light & Power Co. v. D.C. Dep't of Empl. Servs., 796 A.2d 665, 2002 D.C. App. LEXIS 85 (2002).

Consent to an employment agreement is not imputed as a matter of law; it must be established factually. Union Light & Power Co. v. D.C. Dep't of Empl. Servs., 796 A.2d 665, 2002 D.C. App. LEXIS 85 (2002).

Proof of consent to work as a joint or borrowed employee under workers' compensation is required because the need for a contract to hire in the borrowed-employee situation is based on the fact that the employee loses certain rights along with those gained when striking up a new employment relation. Union Light & Power Co. v. D.C. Dep't of Empl. Servs., 796 A.2d 665, 2002 D.C. App. LEXIS 85 (2002).

The Workers' Compensation Act does not afford a claimant with a presumption regarding the nature and extent of his disability; instead, the claimant maintains the burden of proving the nature and extent of his disability. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Where rebuttal evidence is presented by the employer, the claimant ultimately has the burden to show by a preponderance of the evidence that his or her disability, in an economic sense, was caused by the work injury. Upchurch v. D.C. Dep't of Empl. Servs., 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

Notwithstanding statutory presumption of compensability, burden ultimately falls on workers' compensation claimant to show by preponderance of the evidence that his disability was caused by work-related injury. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 744 A.2d 992, 2000 D.C. App. LEXIS 5 (2000).

Claims coming within the provisions of chapter—In general.

Presumption is in favor of job-relatedness where multicausation may exist but no substantial evidence is introduced demonstrating that nonwork related factors are the only causes. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 2(2), 20, 33 U.S.C. §§ 901 et seq., 902(2), 920; D.C. Code 1973, § 36-501 et seq. Hensley v. Washington Metropolitan Area Transit Authority, 655 F.2d 264, 1981 U.S. App. LEXIS 19198 (C.A.D.C. 1981), writ of certiorari denied by 456 U.S. 904, 102 S. Ct. 1749, 72 L. Ed. 2d 160, 1982 U.S. LEXIS 1522, 50 U.S.L.W. 3783 (1982).

To take advantage of the presumption of compensability, a workers' compensation claimant must make an initial showing that he or she sustained injuries and a work-related event that has the potential of contributing to the injuries; once this minimal initial showing is made, the presumption establishes a causal connection between the claimant's injury and the work-related event, and the employer must present specific and comprehensive evidence in order to sever the presumed causal relationship between claimant's injury and his or her employment. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 992 A.2d 1276, 2010 D.C. App. LEXIS 199 (2010).

To raise the statutory presumption of compensability under the Workers' Compensation Act, a claimant must make an initial demonstration of both an injury and a relationship between that injury and the employment. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

Under the Workers' Compensation Act, once a claimant demonstrates that a disability resulted from a work-related injury, there is a presumption that his or her claim comes within the provisions of the Act. Burge v. D.C. Dep't of Empl. Servs., 842 A.2d 661, 2004 D.C. App. LEXIS 53 (2004).

Presumption that a claim comes within the purview of Workers' Compensation Act is fully applicable where a compensation claim is brought to determine whether an employer may successfully raise the exclusivity provision of the Workers' Compensation Act as a defense to an action in tort. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

When an employee presents evidence demonstrating that an injury was potentially caused or aggravated by a work-related activity, a presumption arises that the injury is work-related and therefore compensable under the Workers' Compensation Act. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

Where statutory presumption of compensability is not rebutted, the compensation claim will be deemed to fall within the purview of Workers' Compensation Act and the claimant is entitled to compensation. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

Substantial evidence did not support Department of Employment Services (DOES) appeal examiner's finding of fact that claimant's disabling medical condition, hypertension and stress, arose more than three years before date of injury, so as to support his conclusion that evidence overcame presumption that claimant's injuries arose from his employment; although finding was based primarily on form by claimant's personal physician dated prior to date of injury, there was evidence that form was most likely misdated, and examiner relied on form without addressing its patent weaknesses. Fontenot v. D.C. Dep't of Empl. Servs., 804 A.2d 1104, 2002 D.C. App. LEXIS 484 (2002).

When a claimant presents some "initial demonstration" of an employment connection to his or her disability, the claimant is entitled to a presumption under the Workers' Compensation Act that his or her injury arose out of and in the course of his or her employment. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Injuries suffered by a worker on the job are presumed by statute to be compensable. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 746 A.2d 278, 2000 D.C. App. LEXIS 7 (2000).

Statutory presumption of compensability was warranted in workers' compensation case; claimant, who was a nurse, testified that, when she lifted patient, she "felt something drop" in her abdomen and that her condition dramatically worsened following this incident, and there was abundance of objective medical evidence documenting the symptoms that claimant experienced after the lifting incident. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 744 A.2d 992, 2000 D.C. App. LEXIS 5 (2000).

Under Workers' Compensation Act, once claimant demonstrates work-related event and subsequent disability, there is presumption that claim comes in with provisions of Act. D.C. Code 1981, § 36-321(1). Ferreira v. District of Columbia Dep't of Employment Servs., 667 A.2d 310, 1995 D.C. App. LEXIS 192 (1995).

Injuries suffered by worker on the job are presumed compensable under Workers' Compensation Act. D.C. Code 1981, § 36-321(1). Sturgis v. District of Columbia Dep't of Employment Servs., 629 A.2d 547, 1993 D.C. App. LEXIS 188 (1993).

Worker who suffered from severe cervical spine disability was entitled to presumption that her injury was compensable; worker presented sufficient evidence regarding lifting requirements of her work to establish potential connection between work-related activity and her disability. D.C. Code 1981,§ 36-321. Ferreira v. District of Columbia Dep't of Employment Services (Workers' Compensation), 531 A.2d 651, 1987 D.C. App. LEXIS 449 (1987).

— Amount of disability, claims coming within the provisions of chapter.

Presumption of work relatedness has no application in determining nature and extent of workers' compensation claimant's disability. Davis-Dodson v. District of Columbia Dep't of Empl. Servs., 697 A.2d 1214, 1997 D.C. App. LEXIS 181 (1997).

Once statutory presumption that claim comes within provisions of Workers' Compensation Act is triggered, presumption plays no role in determining nature and extent of disability. D.C. Code 1981, § 36-321(1). Baker v. District of Columbia Dep't of Employment Services, 611 A.2d 548, 1992 D.C. App. LEXIS 202 (1992).

Claimant hit by falling sledge hammer at work was not entitled to presumption that he was totally and permanently disabled. Dunston v. District of Columbia Dep't of Employment Services, 509 A.2d 109, 1986 D.C. App. LEXIS 336 (1986).

— Causal connection, claims coming within the provisions of chapter.

To benefit from the statutory presumption that a private sector workers' compensation claim comes within the Workers' Compensation Act, the employee need only show some evidence of a disability and a work-related event or activity which has the potential of resulting in or contributing to the disability; such a showing effectuates the presumption, which operates to establish a causal connection between the disability and the work-related event, activity, or requirement, and shifts the burden of production to the employer to produce substantial evidence demonstrating that the disability did not arise out of and in the course of employment. Hensley v. District of Columbia Dept. of Employment Services, 2012 WL 3508932 (2012).

Under the Workers' Compensation Act, when a claimant demonstrates a work-related event and a subsequent disability, there is a presumption that the claim comes within the provisions of the Act, and in order to rebut the presumption, the employer must provide substantial evidence that the disability did not arise out of, in the course of, or was aggravated by, the employment. Jackson v. D.C. Dep't of Empl. Servs., 979 A.2d 43, 2009 D.C. App. LEXIS 362 (2009).

The Workers' Compensation Act creates a two-pronged presumption that (i) the event causing, or contributing to, the disability arose out of and in the course of employment, and (ii) that a medical causal relationship exists between the claimed disability and a work-related event. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

The presumption of compensability under the Workers Compensation Act operates to establish a causal connection between the disability and the work-related event, activity, or requirement. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

To raise the presumption of compensability, a claimant must make an initial showing that he or she sustained injuries and a work-related event that has the potential of contributing to the injuries; once this minimal initial showing is made, the presumption establishes a causal connection between the claimant's injury and the work-related event, and the employer must

present specific evidence in order to sever the presumed causal relationship between claimant's injury and his or her employment. Jackson v. D.C. Dep't of Empl. Servs., 955 A.2d 728, 2008 D.C. App. LEXIS 383 (2008).

To raise the presumption of compensability, a claimant must make an initial showing that he or she sustained injuries and a work-related event that has the potential of contributing to the injuries; once this minimal initial showing is made, the presumption establishes a causal connection between the claimant's injury and the work-related event, and the employer must present specific evidence in order to sever the presumed causal relationship between claimant's injury and his or her employment. Jackson v. D.C. Dep't of Empl. Servs., 955 A.2d 728, 2008 D.C. App. LEXIS 383 (2008).

To trigger the presumption that disability claim is covered under Workers' Compensation Act, a claimant needs to make some initial demonstration of the employment-connection of the disability; the presumption then operates to establish a causal connection between the disability and the work-related event, activity, or requirement. Georgetown Univ. Hosp. v. D.C. Dep't of Empl. Servs., 929 A.2d 865, 2007 D.C. App. LEXIS 473 (2007).

Once a workers' compensation claimant shows that she has a work-related impairment, she is entitled to a finding of disability unless the employer demonstrates availability of suitable alternative employment. Wash. Post v. D.C. Dep't of Empl. Servs., 853 A.2d 704, 2004 D.C. App. LEXIS 372 (2004).

Once the statutory presumption of a causal relationship between workers' compensation claimant's disability and an injury the claimant sustained at work is triggered, the burden is upon the employer to bring forth substantial evidence showing that death or disability did not arise out of and in the course of employment. Wash. Post v. D.C. Dep't of Empl. Servs., 852 A.2d 909, 2004 D.C. App. LEXIS 292 (2004).

To invoke the statutory presumption of a causal relationship between workers' compensation claimant's disability and an injury the claimant sustained at work, a claimant merely has to present "some evidence" of a work-related event, activity, or requirement which has the potential of resulting in or contributing to the claimant's disability. Wash. Post v. D.C. Dep't of Empl. Servs., 852 A.2d 909, 2004 D.C. App. LEXIS 292 (2004).

The Workers' Compensation Act (WCA) does not require a causal relationship between the nature of the employment and the accident. Joyner v. Sibley Mem. Hosp., 826 A.2d 362, 2003 D.C. App. LEXIS 417 (2003).

Once an employee offers evidence demonstrating that an injury was potentially caused or aggravated by a work-related activity, a presumption arises that the injury is work-related and therefore compensable under the Workers' Compensation Act. Mexicano v. D.C. Dep't of Empl. Servs., 806 A.2d 198, 2002 D.C. App. LEXIS 517 (2002).

To benefit from statutory presumption of compensability, workers' compensation claimant need only show "some evidence" of a disability and a work-related event or activity which has the potential of resulting in or contributing to the disability; such a showing effectuates the presumption and shifts the burden of production to the employer to produce substantial evidence demonstrating that the disability did not arise out of and in the course of employment. Mexicano v. D.C. Dep't of Empl. Servs., 806 A.2d 198, 2002 D.C. App. LEXIS 517 (2002).

Hearing examiner, by simply rejecting claimant's "cumulative impact" theory regarding her back injury because claimant was suffering degenerative changes from pre-existing condition that were not causally related to her work injury, while making no reference to statutory presumption of compensability, failed to show that hearing examiner had applied the presumption when resolving the question whether activities on the job aggravated the pre-existing condition. Waugh v. D.C. Dep't of Empl. Servs., 786 A.2d 595, 2001 D.C. App. LEXIS 252 (2001).

There is a statutory presumption that a claim for injuries suffered by a worker on the job comes within the provisions of workers' compensation law, absent evidence to the contrary, and this presumption then operates to establish a causal connection between the disability and work-related event. Murray v. District of Columbia Dep't of Empl. Servs., 765 A.2d 980, 2001 D.C. App. LEXIS 13 (2001).

To benefit from the presumption of compensability and shift the burden to the employer to provide substantial evidence that the disability did not arise in the course of employment, workers' compensation claimant only needs to make an initial demonstration of an employment connected disability. Murray v. District of Columbia Dep't of Empl. Servs., 765 A.2d 980, 2001 D.C. App. LEXIS 13 (2001).

To come within the presumption that injuries suffered by a worker on the job are compensable, a claimant must make an initial showing of some evidence of a death or disability and a work-related activity, or requirement which has the potential of resulting in or contributing to the death or disability; then, the presumption operates to establish a causal connection between the disability and work-related event, activity, or requirement. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 746 A.2d 278, 2000 D.C. App. LEXIS 7 (2000).

Under workers' compensation law, statutory presumption of compensability applies when there is a dispute over causal nexus between the employment and the disabling aggravated condition; it is immaterial that other factors, unrelated to claimant's work duties, may have contributed in some way to aggravation of her condition. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 744 A.2d 992, 2000 D.C. App. LEXIS 5 (2000).

Statutory presumption that a workers' compensation claim is compensable if the claimant proves both a work-related injury and an ensuing disability operates to establish a causal connection between the disability and the work-related event. D.C. Code 1981, § 36-321(1). Washington Vista Hotel v. Department of Empl. Servs., 721 A.2d 574, 1998 D.C. App. LEXIS 218 (1998).

Once initial showing of some evidence of death or disability and work-related event, activity, or requirement which has potential of resulting in or contributing to death or disability has been made, presumption of compensability under Workers' Compensation Act establishes causal connection between disability and work-related event, activity, or requirement. D.C. Code 1981, § 36-301 et seq. Brown v. District of Columbia Dep't of Empl. Servs., 700 A.2d 787, 1997 D.C. App. LEXIS 229 (1997).

Once causal connection is shown between disability and work-related event, workers' compensation claimant is entitled to continuing presumption that ongoing manifestation of such disability remains result of prior job-related injury until rebutted by substantial evidence presented by employer. Davis-Dodson v. District of Columbia Dep't of Empl. Servs., 697 A.2d 1214, 1997 D.C. App. LEXIS 181 (1997).

Claimant who alleged that work related accident caused torn knee cartilage and aggravated his preexisting arthritis was entitled to presumption of causal connection between accident and aggravation of arthritis, notwithstanding that employer never disputed connection between accident and torn cartilage. D.C. Code 1981, § 36-321(1). Whittaker v. District of Columbia Dep't of Employment Servs., 668 A.2d 844, 1995 D.C. App. LEXIS 248 (1995).

Employee need not point to particular work-related event as source of injury since statutory presumption operates to establish causal connection; aggravation of preexisting condition may justify compensation under Workers' Compensation Act. D.C. Code 1981, § 36-321(1). Baker v. District of Columbia Dep't of Employment Services, 611 A.2d 548, 1992 D.C. App. LEXIS 202 (1992).

Statutory presumption that claim comes within provisions of Workers' Compensation Act operates to establish causal connection between disability and work-related event. D.C. Code 1981, § 36-321(1). Baker v. District of Columbia Dep't of Employment Services, 611 A.2d 548, 1992 D.C. App. LEXIS 202 (1992).

— Injuries on premises, claims coming within the provisions of chapter.

Where employee was on his employer's premises and was on his way to an exit within a reasonable time after quitting work, presumption existed that he was in course of his employment and that injury sustained at that time and place arose out of his employment. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., and § 21, as amended, 33 U.S.C. § 901 et seq., and § 921; D.C. Code 1940, § 36-501, 33 U.S.C. § 901 note. Smoot Sand & Gravel Corp. v. Britton, 152 F.2d 17, 1945 U.S. App. LEXIS 3446 (1945).

Evidence in workers' compensation case supported determination that claimant was entitled to a rebuttable presumption that his injuries arose out of, and occurred in the course of his employment as a transit authority bus driver; claimant presented credible evidence of his injuries that arose shortly after a bus accident that caused him to strike his knee and jar his back and wrist, claimant testified that he suffered continuing knee and back pain from the accident that prevented him from working as a bus driver, and reports and examinations of claimant's treating physicians corroborated claimant's testimony. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

For workers' compensation purposes, proof of a compensable injury is distinguishable from proof of a causal relationship between an injury and employment; thus, when an employee proves that his injury occurred while on the job and that the injury resulted in a disabling condition that prevented him from working, he is entitled to a presumption that his worker's compensation claims are compensable. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

— Resolution of doubts, claims coming within the provisions of chapter.

That injury or death occurs in course of employment strengthens presumption that it arises out of employment, with doubts resolved in claimant's favor. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-50 as amended 33 U.S.C. §§ 901-950; D.C. Code § 36-501. Wheatley v. Adler, 407 F.2d 307, 1968 U.S. App. LEXIS 6912 (C.A.D.C. 1968).

Doubts about law or facts are generally to be resolved in favor of workers' compensation claimant. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 832 A.2d 1267, 2003 D.C. App. LEXIS 570 (2003).

In accordance with presumption of compensability in the Workers' Compensation Act, doubts are to be resolved in favor of the claimant. D.C. Code 1981, § 36-321. Short v. Department of Empl. Servs., 723 A.2d 845, 1998 D.C. App. LEXIS 221 (1998).

Doubts as to whether inquiry arose out of employment are resolved in favor of person seeking workers' compensation benefits. D.C. Code 1981, § 36-321(1). Baker v. District of Columbia Dep't of Employment Services, 611 A.2d 548, 1992 D.C. App. LEXIS 202 (1992).

Construction with other laws.

Although there is no presumption of compensability in the unemployment compensation statute as there is in the compensation statute for workers unemployed due to disability, the unemployment compensation statute is to be liberally construed to accomplish its purpose and extend its coverage, with a consequent strict construction of exemption provisions. Brannum v. D.C. Pub. Schs, 946 A.2d 962, 2008 D.C. App. LEXIS 129 (2008).

In general.

Because the Workers' Compensation Act is remedial in nature, it affords the claimant a presumption that the injury constitutes a compensable workplace injury. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

The statutory presumption that a claim comes within the provisions of the Workers' Compensation Act applies as much to the nexus between an employee's malady and his employment activities as it does to any other aspect of a claim. McNeal v. D.C. Dep't of Empl. Servs., 917 A.2d 652, 2007 D.C. App. LEXIS 82 (2007).

Under the Workers' Compensation Act, if one theory of employment causation has the potential to result in or contribute to the disability suffered, the presumption that a claim comes within the provisions of the Act is triggered. McNeal v. D.C. Dep't of Empl. Servs., 917 A.2d 652, 2007 D.C. App. LEXIS 82 (2007).

The Workers' Compensation Act's terms, including the presumption that a claim comes within the provisions of the Act, are to be construed liberally for the benefit of employees and their dependents. McNeal v. D.C. Dep't of Empl. Servs., 917 A.2d 652, 2007 D.C. App. LEXIS 82 (2007).

Presumption that a claim comes within the provisions of the Workers' Compensation Act reflects a strong legislative policy favoring awards in arguable cases; the presumption is designed to effectuate the humanitarian purposes of the statute. McNeal v. D.C. Dep't of Empl. Servs., 917 A.2d 652, 2007 D.C. App. LEXIS 82 (2007).

The statutory presumption of compensability arises where an injury or condition was potentially caused or aggravated by work-related activity. Waugh v. D.C. Dep't of Empl. Servs., 786 A.2d 595, 2001 D.C. App. LEXIS 252 (2001).

The Workers' Compensation Act creates a presumption that an employee's injury is compensable upon a showing by substantial evidence of a disability and a work-related event which had the potential to cause such a disability. Upchurch v. D.C. Dep't of Empl. Servs., 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

To benefit from presumption of compensability in the Workers' Compensation Act, a claimant need only show some evidence of (1) a disability, and (2) a work-related incident having the potential of causing or contributing to the injury. D.C. Code 1981, § 36-321. Short v. Department of Empl. Servs., 723 A.2d 845, 1998 D.C. App. LEXIS 221 (1998).

In determining whether workers' compensation claimant's injury arose in part out of, and in course of, his employment as bus driver, agency was required to apply presumption of compensability. D.C. Code 1981, § 36-301 et seq. Brown v. District of Columbia Dep't of Empl. Servs., 700 A.2d 787, 1997 D.C. App. LEXIS 229 (1997).

To invoke presumption of compensability, workers' compensation claimant must provide some evidence of existence of two basic facts: death or disability; and work-related event, activity, or requirement which has potential of resulting in or contributing to death or disability. D.C. Code 1981, § 36-321(1). Davis-Dodson v. District of Columbia Dep't of Empl. Servs., 697 A.2d 1214, 1997 D.C. App. LEXIS 181 (1997).

It is presumed, in absence of evidence to contrary, that claim comes within provisions of Workers' Compensation Act after claimant initially demonstrates disability and work-related event. D.C. Code 1981, § 36-321(1). Baker v. District of Columbia Dep't of Employment Services, 611 A.2d 548, 1992 D.C. App. LEXIS 202 (1992).

Where it is undisputed that claimant's injury arose out of and in the course of his employment, statutory presumption of compensability is no longer part of case and has no application to determination of nature and extent of claimant's injury. D.C. Code 1981, § 36-321(1). Dunston v. District of Columbia Dep't of Employment Services, 509 A.2d 109, 1986 D.C. App. LEXIS 336 (1986).

Intoxication and malice.

Because of statutory presumption that injury is not occasioned solely by employee's intoxication or malicious intent, employer has heavy burden in attempting to prove such misconduct in proceeding before Benefits Review Board, thus precluding recovery. D.C. Code § 36-501

et seq. Harrington v. Moss, 407 A.2d 658, 1979 D.C. App. LEXIS 458 (1979).

Judicial review.

Statutory presumption that work-related injuries are compensable under the Workers' Compensation Act applied to review proceedings. D.C. Code 1981, § 36-321. Short v. Department of Empl. Servs., 723 A.2d 845, 1998 D.C. App. LEXIS 221 (1998).

Even if hearing examiner's refusal to subpoena injured employee's attorney and force disclosure of settlement agreement between employee and government of Brazil was error in workers' compensation proceeding, error was harmless, since employee had no valid claim against government of Brazil. D.C. Code 1981, §§ 36-321(1), 36-335(g). 4934, Inc. v. District of Columbia Dep't of Employment Services, 605 A.2d 50, 1992 D.C. App. LEXIS 83 (1992).

Modification.

Where a claimant files for a review of benefits due to an alleged changed degree of disability, it is presumed under the Workers' Compensation Act that the changes stem from the initial work-related injury and are covered by the Act; claimant need only present some evidence of (1) a change in the degree of disability, and (2) some initial work-related injury that caused the previous disability. D.C. Code 1981, § 36-321. Short v. Department of Empl. Servs., 723 A.2d 845, 1998 D.C. App. LEXIS 221 (1998).

Notice.

Workers' Compensation Act's presumption, that sufficient notice of the claim has been given to the employer, operates only in the absence of evidence to the contrary, and, once rebutted, the presumption drops out of the case entirely, leaving the burden on the employee to prove timely notice. Howard Univ. Hosp. v. Dep't of Empl. Servs., 960 A.2d 603, 2008 D.C. App. LEXIS 440 (2008).

ALJ was required to consider workers' compensation claimant's testimony that he gave timely notice of his claim to a supervisor, and to apply statutory presumption that, in absence of evidence to the contrary, timely notice had been given, to determine whether the presumption had been rebutted and, if so, whether claimant's testimony satisfied his burden of proving notice. Dillon v. D.C. Dep't of Empl. Servs., 912 A.2d 556, 2006 D.C. App. LEXIS 641 (2006).

Statutory presumption that, in the absence of evidence to the contrary, sufficient notice of workers' compensation claim was given, applied to timeliness with which notice was given, such that workers' compensation claimant was entitled to benefit of the presumption in determining whether notice to his employer of his claim was timely. Dillon v. D.C. Dep't of Empl. Servs., 912 A.2d 556, 2006 D.C. App. LEXIS 641 (2006).

Orders.

Relevant question in workers' compensation case was not whether hearing examiner said that he applied statutory presumption of compensability but, rather, whether, in fact, examiner properly did so; compensation order did not have to contain magic words in order to demonstrate that examiner followed statutory procedures. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 744 A.2d 992, 2000 D.C. App. LEXIS 5 (2000).

Psychological injury.

When a claimant seeks compensation for a psychological injury that allegedly resulted from a work-related accidental physical injury and triggers the statutory presumption that the claim comes within the provisions of the Workers' Compensation Act (WCA), the claimant must show that the physical accident had the potential of resulting in or contributing to the psychological injury; where the presumption is either inapplicable or has been rebutted, the burden falls on the claimant to prove by a preponderance of the evidence that the physical accident caused or contributed to the psychological injury. McCamey v. D.C. Dep't of Empl. Servs., 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

Purpose.

Workers' Compensation Act (WCA) expressly establishes a presumption of compensability, and the purpose of this presumption is to advance the humanitarian goal of the statute and to provide compensation to employees for work-related disabilities reasonably expeditiously, even in arguable cases. Smith v. D.C. Dep't of Empl. Servs., 934 A.2d 428, 2007 D.C. App. LEXIS 642 (2007).

Final decision of ALJ to deny compensation, based on finding that workers' compensation claimant failed to offer sufficient proof of both the nature and extent of his incapacity to work as a transit authority bus driver, did not follow rationally from the factual findings that were supported by substantial evidence; the ALJ found facts that identified the nature of the incapacity, and the only conclusion that flowed rationally from the facts that were found was that the nature of claimant's disability was chronic pain in his back and wrist that eventually resolved and chronic pain in his right knee that continued throughout the course of both periods for which he claimed temporary total disability. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

Statutory presumption of a causal relationship between a workers' compensation claim-

ant's disability and an injury the claimant sustained at work is designed to effectuate the humanitarian purposes of the Workers' Compensation Act and reflects a strong legislative policy favoring awards in arguable cases. Wash. Post v. D.C. Dep't of Empl. Servs., 852 A.2d 909, 2004 D.C. App. LEXIS 292 (2004).

Purpose of statutory presumption of compensability is to advance the humanitarian goal of Workers' Compensation Act and to provide compensation to employees for work-related disabilities reasonably expeditiously, even in arguable cases. Mexicano v. D.C. Dep't of Empl. Servs., 806 A.2d 198, 2002 D.C. App. LEXIS 517 (2002).

Presumption that a claimant's injury arose out of and in the course of his or her employment, because some "initial demonstration" of an employment connection to the claimant's disability has been presented, is designed to effectuate the humanitarian purposes of the Workers' Compensation Act, reflecting a strong legislative policy favoring awards in arguable cases. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Once workers' compensation claimant offers evidence demonstrating that injury was potentially caused or aggravated by work-related activity, presumption arises that injury is work-related and, therefore, compensable under Workers' Compensation Act; this presumption serves to effectuate humanitarian purpose of the Act and reflects strong legislative policy favoring awards in arguable cases. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 744 A.2d 992, 2000 D.C. App. LEXIS 5 (2000).

Presumption of compensability in the Workers' Compensation Act is designed to effectuate the humanitarian purposes of the statute and reflects a strong legislative policy favoring awards in arguable cases. D.C. Code 1981, § 36-321. Short v. Department of Empl. Servs., 723 A.2d 845, 1998 D.C. App. LEXIS 221 (1998).

Workers' Compensation Act contains presumption of compensability, designed to effect humanitarian purposes of Act. D.C. Code 1981, § 36-301 et seq. Harris v. District of Columbia Office of Worker's Compensation, 660 A.2d 404, 1995 D.C. App. LEXIS 135 (1995).

Rebuttal.

Presumption claim for employee's death comes within statute must give way, if substantial contrary evidence is introduced and no evidence is introduced in claimant's behalf. 33 U.S.C. § 921(b). New Amsterdam Casualty Co. v. Hoage, 46 F.2d 837, 1931 U.S. App. LEXIS 2500 (1931).

Independent medical examiner's (IME) opinion, offered to rebut statutory presumption of compensability, was based on mistake of a critical fact that he relied on to form his opinion, namely that because of symptoms of her existing knee condition workers' compensation claimant had scheduled her knee replacement surgery prior to her work-related fall, and that mistake of fact led IME to conclude that fall at work did not significantly alter claimant's condition, and therefore no compensable aggravation of her pre-existing knee injury occurred, and this was insufficient to rebut the presumption, which was supported by treating physician's opinion that fall aggravated claimant's existing knee condition, necessitating surgery. Jackson v. D.C. Dep't of Empl. Servs., 979 A.2d 43, 2009 D.C. App. LEXIS 362 (2009).

To rebut the presumption of work-relatedness of injury, the employer in a workers' compensation case must show by substantial evidence that the injury and/or the disability did not arise out of and in the course of the employment. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

Employer failed to produce specific and comprehensive evidence sufficient to sever the presumption of a causal link between workers' compensation claimant's neck injuries and his employment; claimant's testimony and various medical records reported that he was at work when a bus struck his back and neck and that shortly thereafter he was diagnosed with neck injuries, and it was not enough for employer to show that claimant's encounter with the bus was less dramatic than he alleged, as the record revealed an alternative theory of employment causation. McNeal v. D.C. Dep't of Empl. Servs., 917 A.2d 652, 2007 D.C. App. LEXIS 82 (2007).

To rebut the statutory presumption of a causal relationship between workers' compensation claimant's disability and an injury the claimant sustained at work, an employer's evidence simply needs to be specific and comprehensive enough that a reasonable mind might accept it as adequate to contradict the presumed causal connection between the event at work and the claimant's subsequent disability. Wash. Post v. D.C. Dep't of Empl. Servs., 852 A.2d 909, 2004 D.C. App. LEXIS 292 (2004).

If an employer succeeds in proffering substantial evidence of non-causation, the statutory presumption of a causal relationship between workers' compensation claimant's disability and an injury the claimant sustained at work drops out of the case entirely and the burden then reverts to the claimant to prove by a preponderance of the evidence, without the aid of the presumption, that a work-related injury caused or contributed to his or her disability. Wash. Post v. D.C. Dep't of Empl. Servs., 852 A.2d 909, 2004 D.C. App. LEXIS 292 (2004).

In claim under Workers' Compensation Act, where a party fails to rebut the prima facie case showing both an injury and a relationship between that injury and the employment, the presumption of compensability supplies the legally sufficient nexus between claimant's condition and her injury as well as the causal relationship between the injury and her employment. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

Employer is required to present substantial evidence to rebut the statutory presumption of compensability, rather than to disprove causality with an absolute certainty, after workers' compensation claimant makes an initial showing of some evidence of a disability and a work-related event which potentially resulted in disability. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 827 A.2d 35, 2003 D.C. App. LEXIS 422 (2003).

Non-treating physician's testimony that workers' compensation claimant's knee injury was related to arthritis, and that hospital records did not indicate bruising from date of workplace injury, did not constitute substantial evidence sufficient to rebut presumption of compensability that claimant's disability was causally related to workplace injury; aggravation of pre-existing injury was compensable, and physician did not review pertinent medical reports of treating physician, examined claimant once, insisted that there were no initial complaints of knee pain even though claimant's report of injury identified such pain, and admitted that an arthritic knee was susceptible to aggravation. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 827 A.2d 35, 2003 D.C. App. LEXIS 422 (2003).

Workers' compensation claimant, who had produced sufficient medical reports from treating physician to entitle him to presumption of compensability that his disability was causally related to workplace injury, was not required to present additional sworn expert testimony to rebut sworn deposition testimony of employer's expert, which had been offered in unsuccessful attempt to overcome presumption of compensability. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 827 A.2d 35, 2003 D.C. App. LEXIS 422 (2003).

To rebut the presumption of compensability that arises from evidence demonstrating that an injury was potentially caused or aggravated by a work-related activity, the employer must show by substantial evidence that the disability did not arise out of and in the course of the employment. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

Substantial evidence required to rebut the presumption of compensability that arises from evidence demonstrating that an injury was potentially caused or aggravated by a work-related activity is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and it must be specific and comprehensive enough to sever the potential connection between the disability and the work-related event. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

Physician's report, stating clearly and unequivocally that physician did not believe that claimant's right knee problems were causally related to his work-related injury, constituted substantial evidence specific and comprehensive enough to sever the presumed causal connection between claimant's knee problems and any work-related activity and, thus, to rebut the statutory presumption of compensability. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

It is sufficient for an employer to present substantial medical evidence, as opposed to unequivocal medical evidence, to rebut the statutory presumption of compensability that arises from evidence demonstrating that an injury was potentially caused or aggravated by a work-related activity. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

Statutory presumption of compensability may be dispelled by circumstantial evidence specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

A workers' compensation claimant is entitled to a rebuttable presumption that his injury arose out of and in the course of his employment, if he produces credible evidence of an injury and of a work-related event which has the potential of causing the injury. Sibley Mem. Hosp. v. D.C. Dep't of Empl. Servs., 805 A.2d 974, 2002 D.C. App. LEXIS 501 (2002).

Workers' compensation hearing examiner must presume a causal relation between the present disability and the work-related injury, unless the employer has rebutted the presumption by evidence specific and comprehensive enough to sever the potential connection between the two. Sibley Mem. Hosp. v. D.C. Dep't of Empl. Servs., 805 A.2d 974, 2002 D.C. App. LEXIS 501 (2002).

To defeat a claim for workers' compensation an employer must rebut the presumption that a claimant's injury arose out of and in the course of his or her employment by offering substantial evidence that the claim is not one arising out of and in the course of employment.

Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Substantial evidence that the workers' compensation claim is not one arising out of and in the course of employment is more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

To rebut the statutory presumption of compensability, the employer must show by substantial evidence that the disability did not arise out of and in the course of the employment. Waugh v. D.C. Dep't of Empl. Servs., 786 A.2d 595, 2001 D.C. App. LEXIS 252 (2001).

The statutory presumption of compensability may be dispelled by circumstantial evidence specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event. Waugh v. D.C. Dep't of Empl. Servs., 786 A.2d 595, 2001 D.C. App. LEXIS 252 (2001).

Where specific and comprehensive evidence rebutting the statutory presumption of compensability has been presented, the claimant ultimately has the burden to show, by a preponderance of the evidence, that her disability was caused by the work injury. Waugh v. D.C. Dep't of Empl. Servs., 786 A.2d 595, 2001 D.C. App. LEXIS 252 (2001).

The statutory presumption of compensability once there has been an on-the-job injury may be rebutted if an employer proves by substantial evidence that the disability did not arise out of and in the course of employment. Upchurch v. D.C. Dep't of Empl. Servs., 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

To defeat a claim for workers' compensation the employer must rebut the presumption that injuries suffered by a worker on the job are compensable by offering substantial evidence that the claim is not one arising out of and in the course of employment. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 746 A.2d 278, 2000 D.C. App. LEXIS 7 (2000).

Evidence was sufficient to rebut presumption that workers' compensation claimant's foot condition of plantar fasciitis was causally related to her employment as a laundry helper, where doctor testified that claimant's condition was related to the structural abnormality of her feet, and that the condition was a naturally occurring event that would occur whether one sits down or stands up. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 746 A.2d 278, 2000 D.C. App. LEXIS 7 (2000).

Statutory presumption of compensability may be rebutted if employer proves by substantial evidence that workers' compensation claimant's disability did not arise out of and in the course of employment, and evidence offered in rebuttal must be specific and comprehensive enough to sever the potential connection between claimant's disability and the work-related event. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 744 A.2d 992, 2000 D.C. App. LEXIS 5 (2000).

In workers' compensation case, statutory presumption of compensability is not so strong as to require the employer to prove that causation is impossible in order to rebut it. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 744 A.2d 992, 2000 D.C. App. LEXIS 5 (2000).

Workers' compensation law's statutory presumption of compensability may be dispelled by circumstantial evidence specific and comprehensive enough to sever the potential connection between a particular injury and job-related event. D.C. Code 1981, § 36-321(1). Clark v. District of Columbia Dep't of Empl. Servs., 743 A.2d 722, 2000 D.C. App. LEXIS 8 (2000).

Employer need not rule out every conceivable work-related hypothesis in order to shoulder the burden of producing substantial evidence to rebut the statutory presumption that unexplained workplace assault arises out of workers' compensation claimant's employment. D.C. Code 1981, § 36-321(1). Clark v. District of Columbia Dep't of Empl. Servs., 743 A.2d 722, 2000 D.C. App. LEXIS 8 (2000).

Workers' Compensation Act creates a rebuttable presumption that an employee's injury is compensable upon a showing by substantial evidence of a disability and a work-related event which had the potential to cause such a disability. D.C. Code 1981, § 36-301 et seq. Gary v. District of Columbia Dep't of Empl. Servs., 723 A.2d 1205, 1998 D.C. App. LEXIS 244 (1998).

There is a presumption of compensability under Workers' Compensation Act; however, presumption may be overcome. D.C. Code 1981, § 36-301 et seq. McKinley v. District of Columbia Dep't of Empl. Servs., 696 A.2d 1377, 1997 D.C. App. LEXIS 151 (1997).

In any proceeding for enforcement of claim for compensation, there is statutory presumption of causal connection between disability and work-related event, which can be rebutted if evidence is specific and comprehensive enough to sever potential connection. D.C. Code 1981, § 36-321(1). Whittaker v. District of Columbia Dep't of Employment Servs., 668 A.2d 844, 1995 D.C. App. LEXIS 248 (1995).

To rebut presumption that workers' compensation claim comes within provisions of Workers' Compensation Act, employer must show by substantial evidence that disability did not rise out of and in the course of employment. D.C. Code 1981, § 36-321(1). Ferreira v. District of

Columbia Dep't of Employment Servs., 667 A.2d 310, 1995 D.C. App. LEXIS 192 (1995).

Presumption that injury suffered by workers' compensation claimant on job was compensable under Workers' Compensation Act was rebutted by evidence that claimant's condition did not arise out of or in course of employment, and by doctors' conclusions that claimant's job situation was not cause of her injuries. D.C. Code 1981, § 36-321(1). Sturgis v. District of Columbia Dep't of Employment Servs., 629 A.2d 547, 1993 D.C. App. LEXIS 188 (1993).

To rebut presumption that claim comes within provisions of Workers' Compensation Act, employer must show by substantial evidence that disability did not arise out of and in course of employment. D.C. Code 1981, § 36-321(1). Baker v. District of Columbia Dep't of Employment Services, 611 A.2d 548, 1992 D.C. App. LEXIS 202 (1992).

Remand.

Remand was required to allow the administrative law judge (ALJ) to weigh physician's testimony on causation in light of all of the evidence in the record, in claimant's action to recover benefits for an injury to her left knee, which she claimed was a natural consequence of a work-related injury to her right knee; the record did not support the ALJ's conclusion that physician's opinion was misinformed. Jackson v. D.C. Dep't of Empl. Servs., 955 A.2d 728, 2008 D.C. App. LEXIS 383 (2008).

Remand was required for hearing examiner to determine whether workers' compensation claimant was entitled to permanent total disability benefits, where it appeared that examiner improperly placed on claimant burden of establishing that there were no other jobs to which claimant could return and examiner's decision failed to address treating physician's conclusion that claimant was permanently totally disabled. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

By requiring employer to prove that workers' compensation claimant's condition could not have been caused by work-related incident, Director of the Department of Employment Services (DOES) imposed too heavy a burden upon employer to rebut the statutory presumption of compensability, and as such, case would be remanded to Director with instructions to review the compensation order de novo and, in doing so, to apply the correct "substantial evidence" standard. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 744 A.2d 992, 2000 D.C. App. LEXIS 5 (2000).

Shifting of burden.

Should the employer succeed in dispelling the statutory presumption of compensability in a workers' compensation case, the burden then shifts to the claimant to show, by a preponderance of evidence, that the injury was in fact causally related to the employer's work. Smith v. D.C. Dep't of Empl. Servs., 934 A.2d 428, 2007 D.C. App. LEXIS 642 (2007).

A claimant seeking to trigger the presumption that a claim is covered under Workers' Compensation Act will establish initial demonstration of employment-connection of the disability if she can prove a death or disability, and a work-related event, activity, or requirement which has the potential of resulting in or contributing to the death or disability; if these two facts are established, the presumption is then triggered and the court places the burden on the employer to provide substantial evidence showing that the disability is not work-related. Georgetown Univ. Hosp. v. D.C. Dep't of Empl. Servs., 929 A.2d 865, 2007 D.C. App. LEXIS 473 (2007).

When preliminary evidence in claim under Workers' Compensation Act shows both an injury and a relationship between that injury and the employment, the burden of production shifts to the employer to present substantial evidence which is specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event; absent such evidence, the claim will be deemed to fall within the scope of the Act, and a causal relationship will also be presumed. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

"Substantial evidence," for purposes of employer's burden of overcoming statutory presumption of compensability in workers' compensation action, is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and it must be specific and comprehensive enough to sever the potential connection between the disability and the work-related event. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 827 A.2d 35, 2003 D.C. App. LEXIS 422 (2003).

If employer is able to rebut workers' compensation claimant's presumption of compensability through the presentation of substantial evidence, then claimant must prove by a preponderance of the evidence that injury was caused by his job requirements. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 827 A.2d 35, 2003 D.C. App. LEXIS 422 (2003).

Once workers' compensation claimant establishes prima facie case of total disability, employer must present sufficient evidence of suitable job availability to overcome finding of total disability; if employer meets that evidentiary burden, claimant may refute employer's pre-

sentation, and thereby sustain finding of total disability, either by challenging legitimacy of employer's evidence of available employment or by demonstrating diligence, but lack of success, in obtaining other employment. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

Employer's presentation of evidence that claimant had continued his employment as a cable installer immediately after the on-the-job accident at the employer's newspaper business shifted the burden to the claimant to show that there indeed was a causal link between his work-related injury and his loss of wages. Upchurch v. D.C. Dep't of Empl. Servs., 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

To trigger the statutory presumption that claim for injuries suffered by a worker on the job comes within the provisions of workers' compensation law, the claimant must provide some evidence of a death or disability and a work-related event, activity, or requirement which has the potential of resulting in or contributing to the death or disability, and if such evidence is produced, the burden shifts to the employer to produce substantial evidence showing that the death or disability did not arise out of and in the course of employment. Murray v. District of Columbia Dep't of Empl. Servs., 765 A.2d 980, 2001 D.C. App. LEXIS 13 (2001).

Substantial evidence that a workers' compensation claim is not one arising out of and in the course of employment, so as to rebut the presumption that injuries suffered by a worker on the job are compensable, is more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 746 A.2d 278, 2000 D.C. App. LEXIS 7 (2000).

To defeat workers' compensation claim, employer had to show that claimant's present condition was solely the natural result of her preexisting condition or of other causes unrelated to her employment, and since employer failed to make this showing, employer failed to rebut the statutory presumption of compensability. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 744 A.2d 992, 2000 D.C. App. LEXIS 5 (2000).

Once statutory presumption of compensability is triggered, burden shifts to employer to produce substantial evidence that workers' compensation claimant's disability did not arise out of and in the course of employment. D.C. Code 1981, § 36-321(1). Clark v. District of Columbia Dep't of Empl. Servs., 743 A.2d 722, 2000 D.C. App. LEXIS 8 (2000).

Once the presumption of compensability is triggered, burden shifts to employer to produce substantial evidence that workers' compensation claimant's disability did not arise out of and in the course of employment, and doubts as to whether injury arose out of employment are resolved in claimant's favor. D.C. Code 1981, § 36-321. King v. District of Columbia Dep't of Empl. Servs., 742 A.2d 460, 1999 D.C. App. LEXIS 285 (1999).

Workers' compensation claimant must provide some evidence that disability is connected with employment before burden of production is shifted to employer in workers' compensation proceeding. D.C. Code 1981, § 36-301 et seq. Brown v. District of Columbia Dep't of Empl. Servs., 700 A.2d 787, 1997 D.C. App. LEXIS 229 (1997).

Once burden of production is shifted to employer, in workers' compensation proceeding, employer has burden of producing substantial evidence demonstrating that disability did not arise out of and in the course of employment. D.C. Code 1981, § 36-301 et seq. Brown v. District of Columbia Dep't of Empl. Servs., 700 A.2d 787, 1997 D.C. App. LEXIS 229 (1997).

In order to invoke presumption of compensability, workers' compensation claimant must provide some evidence of death or disability and of work-related event, activity or requirement which has potential of resulting in or contributing to death or disability; if claimant satisfies threshold requirement, burden of production shifts to employer. D.C. Code 1981, § 36-321(1). Spartin v. District of Columbia Dep't of Employment Services, 584 A.2d 564, 1990 D.C. App. LEXIS 327 (1990).

Weight and sufficiency of evidence.

If the employer proffers substantial evidence to rebut the presumption of compensability under the Workers' Compensation Act, then the presumption drops out of the case entirely, and the burden reverts to the claimant to prove his entitlement to benefits by the preponderance of the evidence. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

Substantial evidence to rebut the presumption that a claim comes within the provisions of the Workers' Compensation Act exists where the employer presents circumstantial evidence specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event. McNeal v. D.C. Dep't of Empl. Servs., 917 A.2d 652, 2007 D.C. App. LEXIS 82 (2007).

Whether employer presented sufficient evidence to rebut the statutory presumption of causation presented a question of law in workers' compensation proceeding that Court of Appeals would review de novo. Wash. Post v. D.C. Dep't of Empl. Servs., 852 A.2d 909, 2004 D.C. App. LEXIS 292 (2004).

Reports and testimony of board certified orthopedic surgeon that workers' compensation claimant's disability was attributable solely to the natural progression of his pre-existing knee disease constituted substantial medical evidence that was sufficient to rebut statutory presumption of causal relationship between claimant's disability and injury claimant sustained at work; surgeon's professional qualifications were unquestioned, he based his opinion on his personal examination of claimant and his review of all the pertinent medical records, his opinion was firm and unambiguous, and he supported opinion with detailed reasons. Wash. Post v. D.C. Dep't of Empl. Servs., 852 A.2d 909, 2004 D.C. App. LEXIS 292 (2004).

Claimant, a professional basketball player, presented evidence sufficient to create a presumption that her hip injury was covered by the Workers' Compensation Act; claimant demonstrated that her hip injury occurred while she was playing for professional basketball team and at a time when she was still under contract with the team. Burge v. D.C. Dep't of Empl. Servs., 842 A.2d 661, 2004 D.C. App. LEXIS 53 (2004).

In claim under Workers' Compensation Act, when evidence is presented that is sufficient to sever the injury from the work and overcome the presumption that a claimant's injury stems from any work-related event, activity or requirement, the presumption that a claim comes within the purview of Workers' Compensation Act falls from consideration and all evidence submitted must be weighed without recourse to the presumption. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

Evidence submitted by workers' compensation claimant was sufficient to invoke presumption of compensability that his disability was causally related to workplace injury in action against employer, the transit authority; claimant testified that he slipped and fell off of a ladder while he was performing monthly maintenance work on platform elevator at station, in section of "Employee on the Job Injury" form asking for parts of body injured claimant checked head, upper back, knees and right ankle, emergency room record contained notation, "knee pain," and treating physician's report showed that claimant suffered injuries to his knees. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 827 A.2d 35, 2003 D.C. App. LEXIS 422 (2003).

In light of opinion of workers' compensation claimant's treating physician that either work injury had directly herniated a disc in claimant's neck or herniated disc was asymptomatic preexisting condition that became symptomatic after accident, evidence presented by employer that claimant returned to work full-time and failed to mention injury to his neck when he saw doctor immediately following injury to his low back was not specific and comprehensive enough to overcome statutory presumption of compensability, particularly where claimant explained that financial pressures drove him to keep working contrary to medical advice. Mexicano v. D.C. Dep't of Empl. Servs., 806 A.2d 198, 2002 D.C. App. LEXIS 517 (2002).

Coemployee's testimony that he did not see the fall provided no basis upon which to refute workers' compensation claimant's evidence that he fell since claimant, unlike coemployee, had personal knowledge of events, and thus, claimant, whose evidence consisted of his own testimony concerning his fall on the job, corroborated to some extent by co-worker, and his medical records of his treatment that day, met the threshold requirement for triggering statutory presumption of compensability. Murray v. District of Columbia Dep't of Empl. Servs., 765 A.2d 980, 2001 D.C. App. LEXIS 13 (2001).

Finding that workers' compensation claimant's foot condition of plantar fasciitis was an accidental injury, rather than an occupational disease, so as to allow presumption that the injury was causally related to her employment, was supported by doctor's testimony that plantar fasciitis was a condition commonplace in the general population, and by claimant's testimony that she did not expect to develop a foot injury, but began experiencing pain in the heel of both feet while employed as a laundry helper. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 746 A.2d 278, 2000 D.C. App. LEXIS 7 (2000).

To benefit from statutory presumption of compensability under Workers' Compensation Act, claimant need only present some evidence of a disability and a work-related event, activity, or requirement which has the potential of resulting in or contributing to the disability; presumption then operates to establish causal connection between disability and the work-related event, activity, or requirement. D.C. Code 1981, § 36-321(1). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 744 A.2d 992, 2000 D.C. App. LEXIS 5 (2000).

Applying the statutory presumption of coverage together with the positional-risk standard to workplace assaults, where employee is assaulted by third party on employer's premises or otherwise in the course of employment, employee's resulting injuries are presumed covered under Workers' Compensation Act unless employer presents substantial evidence that assault was motivated by something entirely personal to employee and unrelated to employment, and for this reason, even if assault remains unexplained, it is compensable under

Act. D.C. Code 1981, § 36-321(1). Clark v. District of Columbia Dep't of Empl. Servs., 743 A.2d 722, 2000 D.C. App. LEXIS 8 (2000).

Evidence that workers' compensation claimant's assailant picked out specific red car in employer's parking lot and asked for the lady who drove that car and focused on that person to the exclusion of other employees was not specific and comprehensive enough to rebut the statutory presumption of compensability, for the precise reason that motive behind assault remained unknown and speculative; finding that claimant's assailant had some motive to target her specifically was not the same as a finding that he had personal, non-work related motive to do so. D.C. Code 1981, § 36-321(1). Clark v. District of Columbia Dep't of Empl. Servs., 743 A.2d 722, 2000 D.C. App. LEXIS 8 (2000).

Evidence that workers' compensation claimant was at work and engaged in the course of her usual duties when co-worker summoned her to employer-owned parking lot where she was assaulted and seriously injured by unknown assailant for unknown reasons was sufficient to trigger the statutory presumption of compensability. D.C. Code 1981, § 36-321(1). Clark v. District of Columbia Dep't of Empl. Servs., 743 A.2d 722, 2000 D.C. App. LEXIS 8 (2000).

To invoke statutory presumption of compensability, workers' compensation claimant must present some evidence of a death or disability and a work-related event, activity, or requirement which has potential to result in or contribute to the death or disability, and the presumption then operates to establish causal connection between disability and the work-related event. D.C. Code 1981, § 36-321(1). Clark v. District of Columbia Dep't of Empl. Servs., 743 A.2d 722, 2000 D.C. App. LEXIS 8 (2000).

Workers' compensation claimant's testimony describing his back problems and his increased pain while working in the District of Columbia, combined with hearing examiner's findings regarding the routine physical exertion involved in claimant's job, was sufficient to trigger the rebuttable presumption of coverage based either on the premise of aggravating injury at that time and place or on the premise of cumulative work-related trauma culminating in disabling injury at that point. D.C. Code 1981, § 36-321(1). King v. District of Columbia Dep't of Empl. Servs., 742 A.2d 460, 1999 D.C. App. LEXIS 285 (1999).

Workers' compensation claimant's testimony describing his back problems and his increased pain while working in the District of Columbia, combined with hearing examiner's findings regarding the routine physical exertion involved in claimant's job, was sufficient to trigger the rebuttable presumption of coverage based either on the premise of aggravating injury at that time and place or on the premise of cumulative work-related trauma culminating in disabling injury at that point. D.C. Code 1981, § 36-321(1). King v. District of Columbia Dep't of Empl. Servs., 742 A.2d 460, 1999 D.C. App. LEXIS 285 (1999).

To invoke the presumption of compensability, workers' compensation claimant need only present some evidence of a death or disability and work-related event which has potential to result in or contribute to the death or disability. D.C. Code 1981, § 36-321. King v. District of Columbia Dep't of Empl. Servs., 742 A.2d 460, 1999 D.C. App. LEXIS 285 (1999).

Claimant is entitled to presumption that the claim comes within provisions of Workers' Compensation Act, and to benefit from this presumption, claimant must provide some evidence of a disability and a work-related event which could have resulted in or contributed to the disability. D.C. Code 1981, § 36-321(1). Olson v. District of Columbia Dep't of Empl. Servs., 736 A.2d 1032, 1999 D.C. App. LEXIS 202 (1999).

Compensability presumption was not sufficient, by itself, to establish that claimant's work-related injury aggravated his pre-existing neck and back condition, for purposes of awarding additional workers' compensation benefits. D.C. Code 1981, § 36-321(1). Washington Vista Hotel v. Department of Empl. Servs., 721 A.2d 574, 1998 D.C. App. LEXIS 218 (1998).

Workers' compensation claimant made initial showing required to create presumption of compensability, of some evidence of death or disability and work-related event, activity, or requirement which has potential of resulting in or contributing to death or disability, where evidence indicated claimant suffered three work-related injuries, the second of which, as well as the nature of his work, aggravated the first injury, and caused chronic back pain. D.C. Code 1981, § 36-301 et seq. Brown v. District of Columbia Dep't of Empl. Servs., 700 A.2d 787, 1997 D.C. App. LEXIS 229 (1997).

Evidence adduced by worker was sufficient as matter of law to invoke statutory presumption of compensability of hernia operation and for worker to ultimately prevail on issue of hernia's work-relatedness; both worker and his supervisor testified that worker had engaged in unusually heavy lifting, and medical evidence adduced by both worker and employer was consistent with conclusion that unusually heavy lifting caused hernia. D.C. Code 1981, § 36-321(1). Parodi v. District of Columbia Dep't of Employment Services, 560 A.2d 524, 1989 D.C. App. LEXIS 118 (1989).

§ 32-1521.01. Establishment of Compensation Order Review Board.

(a) There is hereby established a Compensation Order Review Board ("Board") that shall consist of 5 members as follows:

(1) The Chief Judge of the Office of Hearings and Adjudication ("OHA") within the Department of Employment Services who shall serve as Chairperson; and

(2) Four Administrative Law Judges from the OHA, who shall:

(A) Be appointed by the Chairperson;

(B) Have received an overall rating of satisfactory or above in his or her most recent performance review; and

(C) Be a member in good standing of the OHA.

(b) The Chairperson shall have the authority to create from among the members of the Board one or more Compensation Order Review Panels ("panel") which shall:

(1) Consist of 3 members and may include the Chairperson;

(2) Decide matters before it by majority vote; and

(3) Be prohibited from discussing the compensation order with the Administrative Law Judge who issued the compensation order while the matter is undergoing review.

(c) The Chairperson shall, within 7 days of an application for review being filed, create and assign a panel to review the application for review; provided, that no member of the panel is the Administrative Law Judge who issued the compensation order that is under review.

(d) The panel shall:

(1) Review the compensation order for legal sufficiency;

(2) Dispose of the matter under review by issuing an order affirming the compensation order; reversing the compensation order, in whole or in part, and amending the order based on the panel's findings, or by remanding the order to the issuing Administrative Law Judge for further review; except, that:

(A) The panel shall affirm a compensation order that is based upon substantial evidence and is in accordance with this chapter and other applicable laws and regulations and shall not disturb factual findings contained in the compensation order that are supported by substantial evidence; and

(B) Any reversal, in whole or in part, shall be supported by a written order, which shall contain the legal and factual basis for the reversal, and may amend the compensation order, in whole or in part, or remand the matter to the issuing Administrative Law Judge for additional findings of fact or conclusions of law and the issuance of a compensation order on remand; and

(3) Make its disposition within 30 days of being assigned the application for review.

(e) A party aggrieved by the compensation order on remand may appeal it in the same manner as a compensation order.

(July 1, 1980, D.C. Law 3-77, § 22a, as added Dec. 7, 2004, D.C. Law 15-205, § 1102(a), 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 1102(a) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 1102(a) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — Law 15-205, the "Fiscal Year 2005 Budget Support Act of 2004", was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Short title. — Short title of subtitle J of title I of Law 15-205: Section 1101 of D.C. Law 15-205 provided that subtitle J of title I of the act may be cited as the Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

CASE NOTES

ANALYSIS

Findings of fact.
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Findings of fact.

In a workers' compensation case, the Compensation Review Board (CRB) may not consider the evidence de novo and make factual findings different from those of the examiner. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

Final decision of ALJ to deny compensation, based on finding that workers' compensation claimant failed to offer sufficient proof of both the nature and extent of his incapacity to work as a transit authority bus driver, did not follow rationally from the factual findings that were supported by substantial evidence; the ALJ found facts that identified the nature of the incapacity, and the only conclusion that flowed rationally from the facts that were found was that the nature of claimant's disability was chronic pain in his back and wrist that eventually resolved and chronic pain in his right knee that continued throughout the course of both periods for which he claimed temporary total disability. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

Judicial review.

To the extent that the Compensation Review Board (CRB) in a workers' compensation case properly conducts its review of the decision of the ALJ, the Court of Appeals will affirm the ruling unless it is arbitrary, capricious, or otherwise an abuse of discretion and not in accordance with the law. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

Orders.

Although the Compensation Review Board (CRB) may amend a compensation order in a workers' compensation case, it does not have the authority to reverse an order of an ALJ denying compensation and in its place issue an award of compensation. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

Remand.

In workers' compensation cases where the Compensation Review Board (CRB) concludes that the ALJ's findings compel an award of compensation, it must remand the matter to the ALJ with instructions that the latter issue such an order. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

Scope of administrative review.

The role of the Compensation Review Board (CRB) in a workers' compensation case is limited to a review of the decision of a hearing examiner to determine whether the examiner's findings are supported by substantial evidence in the record and to determine whether the legal conclusions drawn by the examiner are in accordance with applicable law. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

In reviewing a decision of the Compensation Review Board (CRB) in a workers' compensation case, the Court of Appeals must determine first, whether the agency has made a finding of fact on each material contested issue of fact; second, whether the agency's findings are supported by substantial evidence on the record as a whole; and third, whether the CRB's conclusions flow rationally from those findings and comport with the applicable law. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

§ 32-1522. Review of compensation orders.

(a) A compensation order shall become effective when filed with the Mayor as provided in § 32-1520, and, unless an application for review has been filed with the Board as provided in subsection (b) of this section, shall become final at the expiration of the 30th day thereafter.

(b)(1) Repealed.

(2) Repealed.

(2A)(A) A party aggrieved by a compensation order may file an application for review with the Board within 30 days of the issuance of the compensation order. A party adverse to the review may file an opposition answer within 15 days of the filing of an application for review.

(B) A Memorandum of Points and Authorities, which sets forth the legal and factual basis for the review or the opposition thereto, shall be filed with an application for review and an opposition answer; no further submissions shall be permitted, unless requested by the reviewing panel.

(3) Pursuant to the District of Columbia Administrative Procedure Act (§ 2-501 et seq.), any party in interest who is adversely affected or aggrieved by a final decision rendered after review of a compensation order as provided in paragraph (2A) of this subsection or any party in interest who is adversely affected or aggrieved by a compensation order which has been filed as provided in § 32-1520 may petition for review of such decision or order by the District of Columbia Court of Appeals. If any party shall apply to the Court for leave to adduce additional evidence and shall show to the satisfaction of the Court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Mayor, the Court may order such additional evidence to be taken before the Mayor, and to be made part of the record. The Court may remand the case for appropriate action.

(c) If any employer or his officers or agents fail to comply with a compensation order making an award that has become final, any beneficiary of such award, or the Mayor, may apply for the enforcement of the order to the Superior Court of the District of Columbia for enforcement of such order and upon showing that such employer or his officers or agents have failed to comply therewith, the Court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and § 32-1520.

(July 1, 1980, D.C. Law 3-77, § 23, 27 DCR 2503; Dec. 7, 2004, D.C. Law 15-205, § 1102(b), 51 DCR 8441; Mar. 2, 2007, D.C. Law 16-191, § 56, 53 DCR 6794.)

Section references. — This section is referred to in §§ 32-1515, 32-1519, and 32-1524.

Prior Codifications. — 1981 Ed., § 36-322.

Effect of amendments. — D.C. Law 15-205, in subsec. (a), substituted "an application for review has been filed with the Board" for "proceedings for the suspension or setting aside of such order are instituted"; in subsec. (b),

repealed pars. (1) and (2), added par. (2A), and, in par. (3), substituted "(2A) of this subsection or" for "(2) of this subsection, or, if the Mayor has declined to review the order or does not establish a procedure for such review".

D.C. Law 16-191, in subsec. (b)(3), validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1102(b) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1102(b) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 32-1521.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 32-242.

CASE NOTES

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Modification or adjustment of awards.

Additional evidence.

Decision of Department of Employment Services' denying workers' compensation benefits could not be relied upon to deny any future claim for workers' compensation benefits arising from that injury, though claim was moot, given agency's failure to consider treating physician's testimony concerning condition of claimant's back injury, and need to protect claimant's legal right to a proper adjudication of his potential claims for temporary or permanent disability should his work-related back injury affect his future ability to earn wages or receive further treatment; until agency properly considered treating physicians' testimony, issue of whether claimant's back strain had resolved remained open, as if claimant were making claim before the agency in first instance. White v. D.C. Dep't of Empl. Servs., 793 A.2d 1255, 2002 D.C. App. LEXIS 63 (2002).

Statute providing for leave to adduce additional evidence on worker's compensation claim contains no specific time limit for filing motion to adduce but does require that the Director of Employment Services decide appeal of compensation order within 45 days of the filing. D.C. Code 1981, § 36-322(b)(2). Wilson v. District of Columbia Dep't of Employment Servs., 640 A.2d 1044, 1994 D.C. App. LEXIS 62 (1994).

Proffered evidence that physician who had originally determined that disability was caused by prior injury and not by new injury had changed his opinion was material, and there was a reasonable basis for failing to present at initial hearing, so that it could be considered on motion to adduce additional evidence. D.C. Code 1981, § 36-322(b)(2). Wilson v. District of Columbia Dep't of Employment Servs., 640 A.2d 1044, 1994 D.C. App. LEXIS 62 (1994).

Director of Department of Employment Services (DOES) was required by statute to determine whether claimant had reasonable grounds for not introducing supplemental evidence at initial workers' compensation hearing, and whether supplemental evidence sought to be introduced on review of denial of benefits was material by relating to original claim for compensation for alleged permanent partial disability from back injury. D.C. Code 1981, § 36-322(b)(2). Bennett v. District of Columbia Dep't of Employment Servs., 629 A.2d 28, 1993 D.C. App. LEXIS 186 (1993).

Director of Department of Employment Services improperly ignored hospital discharge summary which employee sought to add to record; Director was obligated to consider whether summary was material and whether there were reasonable grounds for failure to adduce evidence in initial hearing. D.C. Code 1981, § 36-322(b)(2). King v. District of Columbia Dep't of Empl. Servs., 560 A.2d 1067, 1989 D.C. App. LEXIS 123 (1989).

Hospital discharge summary was material to questions whether employee had herniated disc, what might have caused it, and whether employee was prevented from resuming employment, could not have been introduced at initial hearing, and could be made part of record as additional evidence; surgery that was reported by summary had not been performed or scheduled until after hearing had concluded and record had been closed. D.C. Code 1981,

§ 36-322(b)(2). King v. District of Columbia Dep't of Empl. Servs., 560 A.2d 1067, 1989 D.C. App. LEXIS 123 (1989).

Administrative review.

— Determination and disposition of proceeding, administrative review.

Director of Department of Employment Services may reverse a hearing examiner's workers' compensation order only when it is unsupported by substantial evidence or is otherwise legally incorrect. Marriott Int'l v. D.C. Dep't of Empl. Servs., 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

In evaluating evidence of record in proceeding for total disability benefits, Department of Employment Services (DOES) must take into account testimony of treating physician, which is ordinarily preferred over that of physician retained solely for litigation purposes; although hearing examiner may reject treating physician's testimony and decide to credit testimony of another physician when there is conflicting medical evidence, DOES must give reasons for such rejection. Logan v. D.C. Dep't of Empl. Servs., 805 A.2d 237, 2002 D.C. App. LEXIS 499 (2002).

Forty-five day requirement was directory, and not mandatory, for purposes of statute providing that applications for review of workers' compensation orders shall be made within 30 days from date that order is filed and final decisions issued pursuant to such review shall be rendered within 45 days from date of application; as such, Director of Department of Employment Services (DOES) had jurisdiction to issue a decision almost three years after the hearing examiner's order. D.C. Code 1981, § 36-322(b)(2). Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs., 712 A.2d 1018, 1998 D.C. App. LEXIS 115 (1998).

Although determination of hearing examiner that claimant was aware, more than a year before filing workers' compensation claim that his injuries were work related was not supported by substantial evidence, Director of Department of Employee Services was not correct in concluding that claim was timely filed without considering alternative whether claimant should have been aware, by exercise of reasonable diligence, of relationship between injury and employment more than a year before filing claim. D.C. Code 1981, § 36-314(a). KOH Sys. v. District of Columbia Dep't of Empl. Servs., 683 A.2d 446, 1996 D.C. App. LEXIS 202 (1996).

Having found that hearing examiner's decision in workers' compensation proceeding was contrary to law and not supported by evidence, Director of Department of Employment Services (DOES) could set aside examiner's order, and was not limited to remanding proceeding to examiner; authority of Director to set aside order was consistent with authority granted to Mayor and delegated in turn to Director, and Director merely rejected examiner's legal conclusion and did not intrude into examiner's factfinding function. D.C. Code 1981, §§ 36-322, 36-322(b)(1); D.C. Mun.Regs. title 7, §§ 230.10, 230.11. Clair v. District of Columbia Dep't of Employment Servs., 658 A.2d 1040, 1995 D.C. App. LEXIS 106 (1995).

Regulation, requiring remand to hearing examiner by Director of Department of Employment Services (DOES) if substantial question of law or fact prevents Director from affirming, must be read to implement provisions of statute which permit remand, rather than to supplant or override that part of statute and other regulations which authorize Director to issue final, reviewable decision setting aside order of hearing examiner if not supported by substantial evidence or not in accordance with workers' compensation statutes. D.C. Code 1981, § 36-301 et seq.; D.C. Mun.Regs. title 7, § 230.11. Clair v. District of Columbia Dep't of Employment Servs., 658 A.2d 1040, 1995 D.C. App. LEXIS 106 (1995).

— In general.

The Director of Department of Employment Services (DOES) conducts a limited review of decisions of a hearing examiner to determine whether the examiner's findings are supported by substantial evidence in the record. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

In workers' compensation case, Director of Department of Employment Services (DOES) may not consider the evidence de novo and make factual findings different from those of the hearing examiner; rather, Director may reverse examiner's decision only when it is not supported by substantial evidence. Canlas v. District of Columbia Dep't of Empl. Servs., 723 A.2d 1210, 1999 D.C. App. LEXIS 3 (1999).

In workers' compensation case, Director of the Department of Employment Services (DOES) is bound by hearing examiner's findings, even though Director may have reached contrary result based on independent review of the record. Canlas v. District of Columbia Dep't of Empl. Servs., 723 A.2d 1210, 1999 D.C. App. LEXIS 3 (1999).

Fact that motions panel had denied worker's motion to adduce additional evidence did not preclude merits division from considering the motion anew on appeal from denial of award. D.C. Code 1981, § 36-322(b)(3). Wilson v. District of Columbia Dep't of Employment Servs., 640 A.2d 1044, 1994 D.C. App. LEXIS 62 (1994).

Hearing examiner was obligated to at least consider issue of whether workers' compensation claimant experienced work-related disabil-

ity due to back strain, and improperly decided not to consider that issue on grounds the issue was not properly raised, the record on the issue was not developed, and the employer did not address the issue; issue of back strain was raised in posthearing memorandum which hearing examiner had explained would be in nature of written closing arguments, neurosurgeon's testimony provided evidentiary foundations sufficient to make back strain a contested issue, and the back strain issue was raised before close of the record. D.C. Code 1981, §§ 36-301 to 36-345. Davis v. District of Columbia Dep't of Employment Services, 542 A.2d 815, 1988 D.C. App. LEXIS 70 (1988).

Director of Department of Employment Services is bound by hearing examiner's findings of fact if those findings are supported by substantial evidence in the record considered as a whole, and director cannot conduct de novo review of evidence concerning factual issues. Santos v. District of Columbia Dep't of Employment Services, 536 A.2d 1085, 1988 D.C. App. LEXIS 12 (1988).

— Questions of law or fact and findings, administrative review.

Even when they might have reached a different result upon an independent review of the record in a workers' compensation case, both the Director of Department of Employment Services and appellate court are bound by the hearing examiner's factual findings. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

Factual findings of the hearing examiner in a workers' compensation case are entitled to great deference on appeal if supported by substantial evidence. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

If the findings of the Director of the Department of Employment Services are not supported by substantial evidence in a workers' compensation case, they cannot be sustained. Mills v. D.C. Dep't of Empl. Servs., 838 A.2d 325, 2003 D.C. App. LEXIS 751 (2003).

Because administrative law judge's (ALJ) credibility determination in favor of doctor, who conducted independent medical evaluation of workers' compensation claimant, was supported by substantial evidence, the Director of Department of Employment Services exceeded his permissible scope of review by disregarding it to come to his own conclusion drawn from an independent review of the record. Marriott Int'l v. D.C. Dep't of Empl. Servs., 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

In workers' compensation case, Director of Department of Employment Services is not at liberty to substitute his judgments for that of hearing examiner based on Director's favored competing body of substantial evidence. Marriott Int'l v. D.C. Dep't of Empl. Servs., 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

If substantial evidence exists to support the hearing examiner's findings in workers' compensation case, the existence of substantial evidence to the contrary does not permit the Director of the Department of Employment Services to substitute his judgment for that of the examiner. Marriott Int'l v. D.C. Dep't of Empl. Servs., 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

In workers' compensation cases, Director of the Department of Employment Services is bound by the hearing examiner's findings of fact even though the Director may have reached a contrary result based on an independent review of the record. Marriott Int'l v. D.C. Dep't of Empl. Servs., 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

Task of Department of Employment Services in a workers' compensation action is to weigh the evidence presented at the hearing to determine if a causal relationship existed between claimant's job requirements and his injury in order to determine compensability. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 827 A.2d 35, 2003 D.C. App. LEXIS 422 (2003).

Agency reviewing workers' compensation claim must explain any decision to credit a non-treating physician's opinion over that of the treating physician; while more weight may be given to the views of a non-treating physician, there would be little force to the preference in favor of a treating doctor's opinion over non-treating doctor's opinion if the agency could ignore that opinion without explanation. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 827 A.2d 35, 2003 D.C. App. LEXIS 422 (2003).

A hearing examiner is not required to explain why he or she credits the opinion of one side over the other in a workers' compensation case. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

In workers' compensation case, court defers to the determination of the Director of the Department of Employment Services (DOES) as long as the Director's decision flows rationally from the facts and those facts are supported by substantial evidence on the record, and if so, the court's consideration ends. Clark v. District of Columbia Dep't of Empl. Servs., 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

If substantial evidence exists to support Director of the Department of Employment Services' (DOES) finding in workers' compensation case, the existence of substantial evidence contrary to that finding does not permit the court to substitute its judgment for the Director's. Clark v. District of Columbia Dep't of Empl.

Servs., 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

In evaluating the evidence of record in workers' compensation case, Department of Employment Services (DOES) must take into account the testimony of a treating physician, which is ordinarily preferred over that of a physician retained solely for litigation purposes. Clark v. District of Columbia Dep't of Empl. Servs., 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

Notwithstanding a preference for the treating physician's testimony over that of a physician hired to evaluate a workers' compensation claim, the hearing examiner, as judge of the credibility of witnesses, may reject the testimony of a treating physician and decide to credit the testimony of another physician when there is conflicting evidence, and in so doing, the hearing examiner must give reasons for rejecting a treating physician's testimony. Clark v. District of Columbia Dep't of Empl. Servs., 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

In evaluating workers' compensation claim, there is a presumption that the claim falls within the coverage of the statute if the claimant provides some evidence of a disability and a workplace condition which has the potential to have caused the disability, and once aggravation is proved, the presumption of compensability will be applied to establish the causal connection necessary to prove a compensable claim, and presumption may be rebutted by evidence specific and comprehensive enough to sever the causal connection. Clark v. District of Columbia Dep't of Empl. Servs., 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

In workers' compensation case, Director of the Department of Employment Services is bound by hearing examiner's findings of fact if those findings are supported by substantial evidence in the record, considered as a whole, and Director must accept those findings of fact which are supported by substantial evidence even if he might have reached different result based on independent review of the record. Pickrel v. District of Columbia Dep't of Empl. Servs., 760 A.2d 199, 2000 D.C. App. LEXIS 233 (2000).

The Director of Department of Employment Services (DOES) is bound by the hearing examiner's findings in a workers' compensation proceeding even though the Director may have reached a contrary result based on an independent review of the record. Washington Vista Hotel v. Department of Empl. Servs., 721 A.2d 574, 1998 D.C. App. LEXIS 218 (1998).

A hearing examiner's workers' compensation decisions are especially weighty when they involve credibility determinations. Washington Vista Hotel v. Department of Empl. Servs., 721 A.2d 574, 1998 D.C. App. LEXIS 218 (1998).

Director of Department of Employment Services is bound by hearing examiner's findings of fact in workers' compensation case if supported by substantial record evidence; however, Director reviews examiner's conclusions of law de novo, since Director has ultimate responsibility within agency for interpreting statute agency administers. D.C. Mun.Regs. title 29, § 5565. KOH Sys. v. District of Columbia Dep't of Empl. Servs., 683 A.2d 446, 1996 D.C. App. LEXIS 202 (1996).

Director of Department of Employment Services is bound to accept hearing examiner's findings of fact in a workers' compensation case if supported by substantial evidence, even though Director might have reached contrary result based on independent review of the record. D.C. Mun.Regs. title 29, § 5565. KOH Sys. v. District of Columbia Dep't of Empl. Servs., 683 A.2d 446, 1996 D.C. App. LEXIS 202 (1996).

Director of Department of Employment Services was bound by decision of hearings examiner in workers' compensation case, but only to extent that findings of fact on which examiner's decision was based were supported by substantial evidence. Teal v. District of Columbia Dep't of Employment Services, 580 A.2d 647, 1990 D.C. App. LEXIS 228 (1990).

Credibility determinations of workers' compensation hearing examiner are accorded special deference by reviewing court. Teal v. District of Columbia Dep't of Employment Services, 580 A.2d 647, 1990 D.C. App. LEXIS 228 (1990).

Department of Employment Services' regulation, which provides that the Director of the Department shall affirm workers' compensation order if it is supported by substantial evidence in the record, unequivocally binds the Director to substantial evidence review in all cases, with no exceptions, notwithstanding contention of the Director that regulation applied only to compensation orders issued without a hearing. D.C. Code 1981, § 1-1510(a)(3)(A). Dell v. Department of Employment Services, 499 A.2d 102, 1985 D.C. App. LEXIS 496 (1985).

Decisions of hearing examiner are to be given special weight when they depend upon demeanor of witnesses. Dell v. Department of Employment Services, 499 A.2d 102, 1985 D.C. App. LEXIS 496 (1985).

Reviewing authority is bound by decision of initial authority or tribunal that follows from the findings of fact of the authority or tribunal in workers' compensation proceeding, if those findings are supported by substantial evidence, even though reviewing authority might have reached contrary result based on independent review of the record. Dell v. Department of

Employment Services, 499 A.2d 102, 1985 D.C. App. LEXIS 496 (1985).

— Trial de novo, administrative review.

Legal rulings of the Director of the Department of Employment Services (DOES) are reviewed de novo in workers' compensation cases. Clark v. District of Columbia Dep't of Empl. Servs., 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

Upon review of workers' compensation cases, the Director of Department of Employment Services (DOES) is bound by the examiner's findings of fact if supported by substantial record evidence, but reviews de novo the examiner's legal conclusions since the Director has final responsibility within the agency for interpreting the statute the agency administers. Vieira v. District of Columbia Dep't of Empl. Servs., 721 A.2d 579, 1998 D.C. App. LEXIS 224 (1998).

When reviewing a hearing examiner's workers' compensation decision, the Director of Department of Employment Services (DOES) may not consider the evidence de novo and make factual findings different from those of the examiner; rather, she may reverse the examiner's decision only when it is not supported by substantial evidence. Vieira v. District of Columbia Dep't of Empl. Servs., 721 A.2d 579, 1998 D.C. App. LEXIS 224 (1998).

Judicial review.

— De novo review, judicial review.

The Court of Appeals reviews the Office of the Director of the Department of Employment Services' (DOES) legal conclusions de novo. Providence Hosp. v. D.C. Dep't of Empl. Servs., 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

The Court of Appeals' review of the legal conclusions of the Director of the Department of Employment Services in a workers' compensation case is de novo. Mills v. D.C. Dep't of Empl. Servs., 838 A.2d 325, 2003 D.C. App. LEXIS 751 (2003).

Appellate court's review of the legal conclusions of Director of the District of Columbia Department of Employment Services (DCDOES) is de novo in workers' compensation case. UPS v. D.C. Dep't of Empl. Servs., 834 A.2d 868, 2003 D.C. App. LEXIS 627 (2003).

Generally, Court of Appeals reviews the legal rulings of the Director of the Department of Employment Services in a workers' compensation case de novo, but otherwise defers to the Director's determination so long as it rationally flows from the facts and is supported by substantial evidence on the record. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 827 A.2d 35, 2003 D.C. App. LEXIS 422 (2003).

The Court of Appeals reviews questions of law de novo, deferring to the interpretation of the workers' compensation statute the Director of the Department of Employment Services (DOES) enforces unless the interpretation conflicts with the statute, is inconsistent with the governing regulation, or otherwise is contrary to established legal doctrine. Gross v. D.C. Dep't of Empl. Servs., 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

The Court of Appeals reviews questions of law de novo, deferring to the interpretation of the workers' compensation statute the Director of the Department of Employment Services (DOES) enforces unless the interpretation conflicts with the statute, is inconsistent with the governing regulation, or otherwise is contrary to established legal doctrine. Fred F. Blanken & Co. v. D.C. Dep't of Empl. Servs., 825 A.2d 894, 2003 D.C. App. LEXIS 303 (2003).

The Court of Appeals reviews the legal rulings of the Director of the Department of Employment Services (DOES) in a workers' compensation matter de novo, but otherwise defers to the Director's determination so long as it rationally flows from the facts and is supported by substantial evidence on the record. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

Court reviews Department of Employment Services' legal rulings in workers' compensation case de novo, since it is emphatically the province and duty of judicial department to say what the law is, and judiciary is final authority on issues of statutory construction. Washington Post v. District of Columbia Dep't of Empl. Servs., 675 A.2d 37, 1996 D.C. App. LEXIS 69 (1996).

— In general.

To the extent that the Compensation Review Board (CRB) in a workers' compensation case properly conducts its review of the decision of the ALJ, the Court of Appeals will affirm the ruling unless it is arbitrary, capricious, or otherwise an abuse of discretion and not in accordance with the law. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

In a worker's compensation case, the Court of Appeals reviews the decision of the Compensation Review Board (CRB), not that of the ALJ; in doing so, however, the Court of Appeals cannot ignore the compensation order which is the subject of the CRB's review. WMATA v. D.C. Dep't of Employment Servs., 926 A.2d 140, 2007 D.C. App. LEXIS 332 (2007).

In reviewing agency decisions in workers' compensation cases, the court must determine, first, whether agency has made finding of fact on each material contested issue of fact, second, whether agency's findings are supported by substantial evidence on record as whole, and

third, whether agency's conclusions flow rationally from those findings and comport with applicable law. Georgetown Univ. Hosp. v. D.C. Dep't of Emple. Servs., 916 A.2d 149, 2007 D.C. App. LEXIS 9 (2007).

Court of Appeals' deference to decision of director of Department of Employment Services (DOES) in workers' compensation proceeding extends to matters of statutory interpretation, yielding only where director's reasoning is unreasonable in light of language of statute, legislative history, or judicial precedent. Sodexho Marriott Corp. v. D.C. Dep't of Empl. Servs., 858 A.2d 452, 2004 D.C. App. LEXIS 444 (2004).

In workers' compensation case, Court of Appeals defers to determination of director of Department of Employment Services (DOES) as long as: (1) director's decision states findings of fact on each material, contested, factual issue; (2) those findings are based on substantial evidence in record; and (3) conclusions of law flow rationally from facts. Sodexho Marriott Corp. v. D.C. Dep't of Empl. Servs., 858 A.2d 452, 2004 D.C. App. LEXIS 444 (2004).

Court's deference to determinations of director of Department of Employment Services extends to matters of statutory construction, relenting only where the director's interpretation of the Workers' Compensation Act is unreasonable in light of prevailing law, inconsistent with the statute as a whole, or plainly erroneous. Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs., 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

Court of Appeals' review of decision by director of Department of Employment Services in workers' compensation case is generally restrained. Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs., 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

For the purpose of appellate review of Department of Employment Services (DOES) decisions, the Court of Appeals reviews the decision of the Director, not the hearing examiner. Providence Hosp. v. D.C. Dep't of Empl. Servs., 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

In reviewing the decision of an agency in a workers' compensation case, Court of Appeals defers to the decision of the Director of Department of Employment Services, so long as the decision is supported by substantial evidence; if there is substantial evidence to support the finding, evidence contrary to that finding does not permit the court to substitute its judgment for that of the Director. Wash. Post v. D.C. Dep't of Empl. Servs., 853 A.2d 704, 2004 D.C. App. LEXIS 372 (2004).

Under the Administrative Procedure Act, in workers' compensation cases, the Court of Appeals must determine first, whether the agency has made a finding of fact on each material contested issue of fact; second, whether the agency's findings are supported by substantial evidence on the record as a whole; and third, whether the conclusions of the Director of the Department of Employment Services flow rationally from those findings and comport with the applicable law. Mills v. D.C. Dep't of Empl. Servs., 838 A.2d 325, 2003 D.C. App. LEXIS 751 (2003).

Appellate court will defer to the workers' compensation determination of the Director of Department of Employment Services as long as the Director's decision flows rationally from the facts, and those facts are supported by substantial evidence in the record. Lincoln Hockey, LLC v. D.C. Dep't of Empl. Servs., 831 A.2d 913, 2003 D.C. App. LEXIS 552 (2003).

The Court of Appeals reviews the decision of the Director of the Department of Employment Services (DOES) to determine whether it is supported by substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in a workers' compensation matter. Gross v. D.C. Dep't of Empl. Servs., 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

The mere existence of evidence contrary to the ALJ's findings, even if substantial, does not permit the Court of Appeals to substitute its judgment for that of the agency in a workers' compensation matter. Gross v. D.C. Dep't of Empl. Servs., 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

Credibility determinations of an ALJ in a workers' compensation matter are accorded special deference by the Court of Appeals. Gross v. D.C. Dep't of Empl. Servs., 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

Court of Appeals accords considerable deference to the agency's interpretation of the Worker's Compensation Act (WCA). Cather v. D.C. Dep't of Empl. Servs., 808 A.2d 766, 2002 D.C. App. LEXIS 558 (2002).

It is the final decision of the Director of the Department of Employment Services (DOES) in a workers' compensation matter, not the hearing examiner's, which may be reviewed in the Court of Appeals. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

In workers' compensation cases, it is the final decision of the Director of the Department of Employment Services, not that of the hearing examiner, which may be reviewed by the Court of Appeals. Sibley Mem. Hosp. v. D.C. Dep't of Empl. Servs., 805 A.2d 974, 2002 D.C. App. LEXIS 501 (2002).

The Court of Appeals will affirm a ruling of Director of Department of Employment Services (DOES) unless it is arbitrary, capricious, or otherwise an abuse of discretion and not in accordance with the law. Landesberg v. D.C.

Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Standard of review employed by the Court of Appeals does not permit it to substitute its judgment about the quality of the evidence for that of the hearing examiner in a workers' compensation proceeding. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

In a workers' compensation case, the Court of Appeals defers to the determination of the Director of the Department of Employment Services as long as the director's decision flows rationally from the facts which are supported by substantial evidence in the record. White v. D.C. Dep't of Empl. Servs., 793 A.2d 1255, 2002 D.C. App. LEXIS 63 (2002).

Petition for review of the Department of Employment Services' denial of claim for further workers' compensation benefits was moot where there were no pending claims related to claimant's back injury and he was awarded disability benefits he requested. White v. D.C. Dep't of Empl. Servs., 793 A.2d 1255, 2002 D.C. App. LEXIS 63 (2002).

It is the final decision of the Director of the Department of Employment Services (DOES), not the hearing examiner's decision, which may be reviewed by the Court of Appeals. Muhammad v. District of Columbia Dep't of Empl. Servs., 774 A.2d 1107, 2001 D.C. App. LEXIS 171 (2001).

In evaluating conflicting medical testimony, as in weighing evidence generally, the workers' compensation hearing examiner has wide latitude. Washington Metro. Area Transit Auth. v. State Dep't of Empl. Servs., 770 A.2d 965, 2001 D.C. App. LEXIS 84 (2001).

Where Court of Appeals reviews workers' compensation decision of Director of the Department of Employment Services reversing hearing examiner's decision, Court must consider whether Director exercised proper restraint in his review. Pickrel v. District of Columbia Dep't of Empl. Servs., 760 A.2d 199, 2000 D.C. App. LEXIS 233 (2000).

It is inappropriate, except possibly in clear case, for appellate court to assume role of making determinations of whether workers' compensation claimant suffered disabling injury during time period in dispute in the first instance; rather, orderly processes of administrative law include agency's initial determination of such matters. Davis v. District of Columbia Dep't of Employment Services, 542 A.2d 815, 1988 D.C. App. LEXIS 70 (1988).

In reviewing decision of Department of Employment Services, judicial review is limited to determining whether agency order disqualifying former employee for workers' compensation benefits was in accordance with law and supported by substantial evidence in record. D.C. Code 1981, §§ 1-1510(a)(3)(A, E), 36-322(b)(3). Joyner v. District of Columbia Dep't of Employment Services, 502 A.2d 1027, 1986 D.C. App. LEXIS 260 (1986).

District of Columbia Workers' Compensation Act did not increase jurisdiction of District of Columbia courts in violation of section of District of Columbia Self-Government and Governmental Reorganization Act which prohibited District of Columbia Council from enacting any act, resolution, or rule relating to organization and jurisdiction of District of Columbia courts where enforcement of a compensation order fell within already existing jurisdiction vested in District of Columbia Superior Court, and where review of final compensation orders by District of Columbia Court of Appeals fell within preexisting jurisdiction of such court to review administrative proceedings. D.C. Code 1981, §§ 1-233(a)(4), 11-722, 11-921(a), 36-322(b)(3), (c). District of Columbia v. Greater Washington Cent. Labor Council, 442 A.2d 110, 1982 D.C. App. LEXIS 288 (1982), writ of certiorari denied by 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487, 1983 U.S. LEXIS 3736, 51 U.S.L.W. 3634 (1983).

— Persons entitled to review, judicial review.

Workers' compensation claimant who prevailed in proceedings before agency with respect to his claims for temporary total disability benefits and medical costs was not "aggrieved party" for purposes of statute providing that aggrieved party may obtain judicial review of administrative action, and as such, Court of Appeals lacked jurisdiction to review agency's decision. D.C. Code 1981,§ 36-322(b)(3). Bellamy v. District of Columbia Dep't of Empl. Servs., 704 A.2d 1204, 1997 D.C. App. LEXIS 292 (1997).

Hypothetical or speculative injury was not of the character required to make workers' compensation claimant "aggrieved party" for purposes of statute providing that aggrieved party may obtain judicial review of administrative action. D.C. Code 1981, § 36-322(b)(3). Bellamy v. District of Columbia Dep't of Empl. Servs., 704 A.2d 1204, 1997 D.C. App. LEXIS 292 (1997).

— Preservation of error, judicial review.

Employer failed to preserve for appellate review claim that hearing examiner erred by considering medical evidence submitted after evidentiary hearing, where employer never argued to examiner or Director of the Department of Employment Services that the supplemental report was inadmissible, nor did employer seek other relief, such as opportunity to depose physician or to reopen hearing. Wash. Post v. D.C. Dep't of Empl. Servs., 852 A.2d 909, 2004 D.C. App. LEXIS 292 (2004).

Workers' compensation claimant's argument that his application for review of disability order denying his claim for workers' compensation benefits was timely filed based on information given to him by Office of General Counsel advising his that his application for review would be considered timely so long as it was mailed within 30 days from date of compensation order, was not preserved for appellate review, where claimant did not give Director of Department of Employment Services (DOES) notice of such argument. Thompson v. D.C. Dep't of Empl. Servs., 848 A.2d 593, 2004 D.C. App. LEXIS 203 (2004).

Reviewing court would not consider whether claimant's back condition was medically causally related to a workplace accident on a particular date in which claimant had injured her neck, where claimant had failed to present the Department of Employment Services with a back-injury claim based on the accident and instead had explicitly conceded to the Department that the back condition was not medically causally related to the accident. Waugh v. D.C. Dep't of Empl. Servs., 786 A.2d 595, 2001 D.C. App. LEXIS 252 (2001).

Court was not required to consider issue of whether balancing test of causation set forth in case law was permissible gloss on term "accidental injury," within meaning of workers' compensation law and what result that test would dictate in light of employer's failure to request hearing examiner to apply balancing test as to claimant who suffered ruptured berry aneurysm; examiner could not be expected to consider application of test sua sponte. D.C. Code 1981, § 36-301(12). Capital Hilton Hotel v. District of Columbia Dep't of Employment Services, 565 A.2d 981, 1989 D.C. App. LEXIS 222 (1989).

Objection that order of the Director of Department of Employment Services denying employee compensation for on-the-job injury was invalid because it violated provisions of D.C. Code 1981, § 36-320, which requires that decision be rendered within 20 days of workers' compensation hearing, did not need to be considered by the Court of Appeals, where employee had not raised the objection in the administrative proceeding. Hughes v. District of Columbia Dep't of Employment Services, 498 A.2d 567, 1985 D.C. App. LEXIS 504 (1985).

— Remand, judicial review.

When the hearing examiner fails to make factual findings on a material contested issue in a workers' compensation case, appellate court is not permitted to make its own finding on the issue; it must remand for the proper factual finding. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

Remand of workers' compensation case was required for Department of Employment Services (DOES) to determine whether claimant, on his application to modify disability award from partial to total disability, met his burden to prove a change in economic condition, and in making that decision, DOES should consider the effect that claimant's voluntary resignation from linen services job had on his changed economic condition and whether, given that decision to voluntarily limit his income, the evidence presented was nevertheless sufficient to shift the burden to employer to prove employability. Cather v. D.C. Dep't of Empl. Servs., 808 A.2d 766, 2002 D.C. App. LEXIS 558 (2002).

Department of Employment Services' order remanding workers' compensation case to hearing examiner was appealable by employer, as matter was finally resolved in claimant's favor as a matter of law when Department determined that substantial evidence did not support examiner's finding that hospital overcame presumption that claimant's low back injury arose out of and in the course of his employment. Sibley Mem. Hosp. v. D.C. Dep't of Empl. Servs., 805 A.2d 974, 2002 D.C. App. LEXIS 501 (2002).

An order remanding a workers' compensation case to the hearing examiner is usually not a final appealable order. Sibley Mem. Hosp. v. D.C. Dep't of Empl. Servs., 805 A.2d 974, 2002 D.C. App. LEXIS 501 (2002).

Remand of workers' compensation case was required for hearing examiner to explain why, when awarding claimant temporary total and permanent partial disability benefits, he credited the testimony of claimant's non-treating physician over that of his treating physician, where non-treating physician opined that claimant, a professional football player, acquired cervical stenosis which created a severe risk of spinal injury if he continued to play football. Pro-Football, Inc. v. District of Columbia Dep't of Empl. Servs., 782 A.2d 735, 2001 D.C. App. LEXIS 217 (2001).

In workers' compensation case in which claimant, a professional football player, was awarded permanent partial disability benefits for a cervical spine injury, remand was required for hearing examiner to consider the impact on the wage loss, if any, due to claimant's projected work-life in the employment at the time of the injury. Pro-Football, Inc. v. District of Columbia Dep't of Empl. Servs., 782 A.2d 735, 2001 D.C. App. LEXIS 217 (2001).

Remand of workers' compensation case was necessary since hearing examiner and the Director of Department of Employment Services (DOES) failed to take into consideration or explain the reasons for rejecting the deposition testimony of claimant's treating physician. Clark v. District of Columbia Dep't of Empl.

Servs., 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

Court of Appeals would not defer to Department of Employment Services' (DOES) interpretation of statute governing reduction of workers' compensation benefits based upon claimant's receipt of benefits from other sources, but instead would remand for authoritative interpretation of statute, where interpretation reached Court through default review procedures and thus was not reviewed by DOES director, hearing examiner relied on case which was not authoritative precedent on precise issue presented, and record did not indicate that hearing examiner analyzed language, structure, or purpose of statute. D.C. Code 1981, §§ 36-308(9), 36-322(b). Mushroom Transp. v. District of Columbia Dep't of Empl. Servs., 698 A.2d 430, 1997 D.C. App. LEXIS 183 (1997).

Court of Appeals would remand case to Department of Social Services hearing examiner, where it appeared that examiner may have applied legal principles substantially more restrictive than proper, in refusing to admit videotape allegedly of workers' compensation claimant performing work of which he claimed he was incapable. Washington Post v. District of Columbia Dep't of Empl. Servs., 675 A.2d 37, 1996 D.C. App. LEXIS 69 (1996).

In view of delays that had been encountered in case and fact that worker was no longer receiving disability benefits from original injury, and where there was an apparent change of diagnosis by treating physician as to whether disability was caused by new injury, Court of Appeals itself would grant motion to adduce additional evidence and remand case to Director of Employment Services. D.C. Code 1981, § 36-322(b)(3). Wilson v. District of Columbia Dep't of Employment Servs., 640 A.2d 1044, 1994 D.C. App. LEXIS 62 (1994).

Remand was required to allow Director of Department of Employment Services (DOES) to determine whether supplemental evidence sought to be introduced by claimant after denial of benefits was sufficiently material to be considered upon review of denial of permanent partial disability benefits for back injury. D.C. Code 1981, § 36-322(b)(2). Bennett v. District of Columbia Dep't of Employment Servs., 629 A.2d 28, 1993 D.C. App. LEXIS 186 (1993).

Workers' compensation case would not be remanded to enable employer and carrier to offer additional evidence, though employer and carrier asserted they had records in their possession regarding issue of jurisdiction, where employer and carrier did not show, either in Court of Appeals or before Department of Employment Services, that such additional evidence was material and that there were reasonable grounds for failure to adduce such evidence at hearing. D.C. Code 1981, § 36-322(b)(3). Regional Constr. Co. v. District of Columbia Dep't of Employment Services, 600 A.2d 1077, 1991 D.C. App. LEXIS 339 (1991), writ of certiorari denied by 505 U.S. 1206, 112 S. Ct. 2997, 120 L. Ed. 2d 873, 1992 U.S. LEXIS 3767, 60 U.S.L.W. 3858 (1992).

— Scope of review, judicial review.

Argument by workers' compensation claimant diagnosed with chronic fatigue syndrome that Department of Employment Services (DOES) failed to accommodate her disability during administrative hearings as required by the Americans with Disabilities Act (ADA), could not be raised by claimant in her appeal of decisions by Director of DOES in workers' compensation proceeding, as the scope of review in workers' compensation proceedings was limited to the decision of the Director of DOES under the Workers' Compensation Act, which did not include claims under the ADA. Hisler v. D.C. Dep't of Empl. Servs., 950 A.2d 738, 2008 D.C. App. LEXIS 272 (2008).

— Time for proceeding, judicial review.

Thirty-day period for filing by workers' compensation claimant of application for review of disability order denying his claim for workers' compensation benefits began running on date compensation order was certified as having been mailed to parties, rather than on date claimant received compensation order, and thus claimant's application for review, filed more than 30 days after date order was mailed to claimant, was untimely. Thompson v. D.C. Dep't of Empl. Servs., 848 A.2d 593, 2004 D.C. App. LEXIS 203 (2004).

Employers were entitled to rely on administrative law judge's errata order, which was not ambiguous nor confusing, but expressly gave the parties 30 days from the date of order to file an application for review, even though, pursuant to original order awarding permanent partial disability benefits to claimant, employer was required to file application for review three days after errata order issued. D.C. Water & Sewer Auth. v. D.C. Dep't of Empl. Servs., 843 A.2d 750, 2004 D.C. App. LEXIS 63 (2004).

Finding that memorandum of informal conference became a final award by operation of law when neither employer nor workers' compensation claimant requested a formal hearing within 34 days after memorandum was issued was material error, where regulation establishing 34-day period for requesting hearing was enacted four years after memorandum was issued, and prior version of regulation did not state that memorandum of informal conference could become final as a matter of law. Moore v. D.C. Dep't of Empl. Servs., 813 A.2d 227, 2002 D.C. App. LEXIS 734 (2002).

Statute which automatically converts Department of Employment Services (DOES)

hearing and appeals examiner's decision into final decision, for purposes of appeal, if Director does not render decision within forty-five days constituted sufficient notice to begin running of thirty-day appeal period, despite fact that DOES did not provide workers' compensation claimant with any separate notification of expiration of forty-five-day period. D.C. Code 1981, § 36-322(b)(2); Court of Appeals Rule 15(a). Stone v. District of Columbia Dep't of Empl. Servs., 707 A.2d 789, 1998 D.C. App. LEXIS 42 (1998).

— Weight and sufficiency of evidence, judicial review.

Court defers to the determination of the director of Department of Employment Services as long as the director's decision flows rationally from the facts, and those facts are supported by substantial evidence in the record. Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs., 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

In workers' compensation cases, appellate court defers to the decision of the agency director provided that the decision flows rationally from facts supported by substantial evidence in the record. Marriott Int'l v. D.C. Dep't of Empl. Servs., 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

Appellate court must determine whether the findings of the Director of the District of Columbia Department of Employment Services (DCDOES) in workers' compensation case are supported by substantial evidence on the record as a whole, and whether the Director's conclusions flow rationally from those findings and comport with the applicable law. Marriott Int'l v. D.C. Dep't of Empl. Servs., 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

Evidence in Workers' Compensation proceedings did not support finding that hospital employee's ankle injury did not arise out of and in the scope of employment, even though initial ankle injury occurred away from work; record showed that employee's supervisor administered injections to employee in order to lessen her discomfort at work and to enable her to be pain free, and such injections aggravated original injury. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

ALJ was precluded from finding that workers' compensation claimant was not entitled to workers' compensation benefits because he was not an employee at time of his work injury without considering contrary evidence that indicated that claimant's testimony that he received work orders from supervisor for the employer was uncontested; documents the ALJ failed to consider included a report that appeared to show that claimant submitted reports as proof of work completed, that a supervisor signed off, dated the forms as received, and sent them to the employer for payment before the accident. Gross v. D.C. Dep't of Empl. Servs., 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

The Court of Appeals reviews the decision of the Director of the Department of Employment Services (DOES) to determine whether it is supported by substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in a workers' compensation matter. Fred F. Blanken & Co. v. D.C. Dep't of Empl. Servs., 825 A.2d 894, 2003 D.C. App. LEXIS 303 (2003).

The decision of the Director of the Department of Employment Services (DOES) that employer's evidence was insufficient to rebut the presumption of compensability presented a question of law that the Court of Appeals would review de novo, which in turn depended on an issue of interpretation of the evidence, as to which the Court defers. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

The Court of Appeals is limited to determining whether an order of Director of Department of Employment Services (DOES) is in accordance with the law and supported by substantial evidence in the record. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

While a hearing examiner may reject the testimony of a treating physician in a worker's compensation case and decide to credit the testimony of another physician when there is conflicting medical evidence, the agency must give reasons for such a rejection. White v. D.C. Dep't of Empl. Servs., 793 A.2d 1255, 2002 D.C. App. LEXIS 63 (2002).

In workers' compensation appeals, the decision of the Department of Employment Services (DOES) will be upheld if it rationally flows from the facts relied upon and those facts or findings are substantially supported by the evidence of record. Pro-Football, Inc. v. District of Columbia Dep't of Empl. Servs., 782 A.2d 735, 2001 D.C. App. LEXIS 217 (2001).

Substantial evidence review utilized by the Director of the Department of Employment Services (DOES) on a hearing examiner's decision presents an issue of law which a reviewing court is in a position to address without need for deference to the agency's decision. Muhammad v. District of Columbia Dep't of Empl. Servs., 774 A.2d 1107, 2001 D.C. App. LEXIS 171 (2001).

To meet the substantial evidence standard of review utilized by the Director of the Department of Employment Services (DOES) on a hearing examiner's decision: (1) the hearing

examiner's underlying decision must state findings of fact on each material, contested factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must follow rationally from the findings. Muhammad v. District of Columbia Dep't of Empl. Servs., 774 A.2d 1107, 2001 D.C. App. LEXIS 171 (2001).

The workers' compensation hearing examiner is entitled to draw reasonable inferences from the evidence presented, and her decisions are especially weighty when they involve credibility determinations. Washington Metro. Area Transit Auth. v. State Dep't of Empl. Servs., 770 A.2d 965, 2001 D.C. App. LEXIS 84 (2001).

Court of Appeals' review of workers' compensation decision of Director of the Department of Employment Services (DOES) is limited to determining whether the Director's order is in accordance with law and supported by substantial evidence in the record, and "substantial evidence" is more than a scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Murray v. District of Columbia Dep't of Empl. Servs., 765 A.2d 980, 2001 D.C. App. LEXIS 13 (2001).

When reviewing workers' compensation decision by Department of Employment Services (DOES), Court of Appeals must simply determine whether substantial evidence supports DOES's decision. Charles P. Young Co. v. District of Columbia Dep't of Empl. Servs., 681 A.2d 451, 1996 D.C. App. LEXIS 153 (1996).

When reviewing workers' compensation decision by Department of Employment Services (DOES), Court of Appeals cannot retry facts or rehear evidence. Charles P. Young Co. v. District of Columbia Dep't of Empl. Servs., 681 A.2d 451, 1996 D.C. App. LEXIS 153 (1996).

There was no basis to overturn hearing examiner's finding that workers' compensation claimant was credible witness in light of precedents indicating that credibility determinations are exclusively within domain of fact finder and that examiner's personal observation of demeanor and conduct of witness is entitled to great weight and examiner's compensation order included thorough and meticulous summary of testimony of witnesses and indicated claimant's testimony was carefully weighed in light of all other evidence. Charles P. Young Co. v. District of Columbia Dep't of Empl. Servs., 681 A.2d 451, 1996 D.C. App. LEXIS 153 (1996).

Court must sustain workers' compensation examiner's factual findings if they are supported by substantial evidence in the record as a whole. Washington Post v. District of Columbia Dep't of Empl. Servs., 675 A.2d 37, 1996 D.C. App. LEXIS 69 (1996).

Modification or adjustment of awards.

Statute permitting modification of workers' compensation orders generally presupposes modification of final decision, either by the Hearings and Adjudications Section (H&AS) of the Department of Employment Services (DOES) when decision was not appealed within 30 days, or by the Director of DOES after appeal; statutory references to claim "rejection" and "last payment" imply a final decision. D.C. Code 1981, §§ 36-322, 36-324. Georgetown Univ. Hosp. v. Department of Employment Servs., 659 A.2d 832, 1995 D.C. App. LEXIS 116 (1995).

When compensation order is still on appeal to Director of Department of Employment Service (DOES), modification statute generally does not apply, and party may not seek from the Hearings and Adjudication Section (H&AS) modification of that order, based on "additional evidence," unless and until the Director upon party's application, remands case for that purpose. D.C. Code 1981, §§ 36-322, 36-324. Georgetown Univ. Hosp. v. Department of Employment Servs., 659 A.2d 832, 1995 D.C. App. LEXIS 116 (1995).

When compensation order of the Hearings and Adjudications Section (H&AS) of the Department of Employment Services (DOES) is still on appeal to Director of the DOES without a remand for additional evidence, H&AS will not have jurisdiction over request for modification of that order, unless issue on which party seeks modification is entirely severable from issues pending before the Director. D.C. Code 1981, §§ 36-322, 36-324. Georgetown Univ. Hosp. v. Department of Employment Servs., 659 A.2d 832, 1995 D.C. App. LEXIS 116 (1995).

Hearings and Adjudications Section (H&AS) of the Department of Employment Services (DOES) lacked jurisdiction over request for modification of previously issued compensation order when that order was still on appeal to Director of DOES, where issues in modification request were not severable from issues before Director, and thus there was potential for conflict between modification order and Director's decision. D.C. Code 1981, §§ 36-322, 36-324. Georgetown Univ. Hosp. v. Department of Employment Servs., 659 A.2d 832, 1995 D.C. App. LEXIS 116 (1995).

Generally, until there has been a final decision by Director of the Department of Employment Services (DOES) on an appealed workers' compensation order, any request for modification of that order should be addressed, pending appeal, to the Director who is obliged to exercise discretion whether to remand case for reconsideration, based on additional evidence, by a hearing examiner. D.C. Code 1981, § 36-322. Georgetown Univ. Hosp. v. Department of Employment Servs., 659 A.2d 832, 1995 D.C. App. LEXIS 116 (1995).

§ 32-1523. Appearance of Attorney General for the District of Columbia for Mayor.

In any court proceedings instituted under the provisions of this chapter, the Corporation Counsel of the District of Columbia shall appear as attorney or counsel on behalf of the Mayor whether the Mayor is a party to the case or interested, and shall represent the Mayor in any court in which such case may be carried on appeal.

(July 1, 1980, D.C. Law 3-77, § 24, 27 DCR 2503.)

Prior Codifications. — 1981 Ed., § 36-323.
Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

§ 32-1524. Modification of awards.

(a) At any time prior to 1 year after the date of the last payment of compensation or at any time prior to 1 year after the rejection of a claim, provided, however, that in the case of a claim filed pursuant to § 32-1508(a)(3)(V) the time period shall be at any time prior to 3 years after the date of the last payment of compensation or at any time prior to 3 years after the rejection of a claim, the Mayor may, upon his own initiative or upon application of a party in interest, order a review of a compensation case pursuant to the procedures provided in § 32-1520 where there is reason to believe that a change of conditions has occurred which raises issues concerning:

(1) The fact or the degree of disability or the amount of compensation payable pursuant thereto; or

(2) The fact of eligibility or the amount of compensation payable pursuant to § 32-1509.

(b) A review ordered pursuant to subsection (a) of this section shall be limited solely to new evidence which directly addresses the alleged change of conditions.

(c) Upon the completion of a review conducted pursuant to subsection (a) of this section, the Mayor shall issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation previously paid, or award compensation. An award increasing or decreasing the compensation rate may be made and shall be effective from the date of the Mayor's order for a review of the compensation case. If, since the date of the Mayor's order for a review of the compensation case, the employer has made any payments of compensation at a rate greater than the rate provided in the new compensation order, the employer shall be entitled to be reimbursed for the difference in accordance with rules promulgated by the Mayor. If, since the date of the Mayor's order for review of the compensation case, the employer has made any payments of compensation at a rate less than the rate provided in the new compensation order, the employee shall be entitled to the difference as additional compensation in accordance with rules promulgated by the Mayor.

(d) A compensation order issued pursuant to subsection (c) of this section shall be reviewable pursuant to § 32-1522.

(July 1, 1980, D.C. Law 3-77, § 25, 27 DCR 2503.)

Prior Codifications. — 1981 Ed., § 36-324.
Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

CASE NOTES

ANALYSIS

Burden of proof.
Hearing.
In general.
Notice.
Orders which may be modified.
Res judicata and collateral estoppel.
Review.
Temporary total disability.
Weight and sufficiency of evidence.

Burden of proof.

Reason to believe standard to obtain an evidentiary hearing on a modification petition under workers' compensation statute requires an affirmative factual showing that a change of conditions has occurred, and only upon such a showing will an evidentiary hearing be afforded. Fred F. Blanken & Co. v. D.C. Dep't of Empl. Servs., 825 A.2d 894, 2003 D.C. App. LEXIS 303 (2003).

While something short of full proof is required to meet the "reason to believe" standard to obtain an evidentiary hearing on a modification petition under workers' compensation statute, a preliminary examination of evidence is contemplated. Fred F. Blanken & Co. v. D.C. Dep't of Empl. Servs., 825 A.2d 894, 2003 D.C. App. LEXIS 303 (2003).

For purposes of entitlement to a hearing on a modification petition, the workers' compensation claimant's burden of demonstrating a change of condition is a light one: the claimant benefits from the presumption of compensability if she provides some evidence of (1) a change in the fact or the degree of disability, and (2) some initial work-related injury that caused the previous disability. Fred F. Blanken & Co. v. D.C. Dep't of Empl. Servs., 825 A.2d 894, 2003 D.C. App. LEXIS 303 (2003).

Where the claimant fails to offer any evidence warranting a modification of the workers' compensation award, the nonmoving party should prevail under the statute even if he produces no evidence at all. Fred F. Blanken & Co. v. D.C. Dep't of Empl. Servs., 825 A.2d 894, 2003 D.C. App. LEXIS 303 (2003).

Workers' compensation claimant failed to carry his burden of proof on application to modify disability award from partial to total disability, as he failed to show a connection between his increased shoulder disability and his inability to perform in his last job as a linen services worker. Cather v. D.C. Dep't of Empl. Servs., 808 A.2d 766, 2002 D.C. App. LEXIS 558 (2002).

A workers' compensation claimant who attempts to prove a change in physical condition that warrants modification of his disability award from partial to total disability must show both an increased disability and an inability to perform the job last held by the claimant. Cather v. D.C. Dep't of Empl. Servs., 808 A.2d 766, 2002 D.C. App. LEXIS 558 (2002).

When seeking relief from a previous workers' compensation order, the burden of showing a change in physical conditions which would warrant holding a hearing on the availability of such relief is placed on the claimant. White v. D.C. Dep't of Empl. Servs., 793 A.2d 1255, 2002 D.C. App. LEXIS 63 (2002).

Where a claimant files for a review of benefits due to an alleged changed degree of disability, it is presumed under the Workers' Compensation Act that the changes stem from the initial work-related injury and are covered by the Act; in order to benefit from this presumption, a claimant need only offer some evidence of: (1) a change in the fact or the degree of disability, and (2) some initial work-related injury that caused the previous disability. Walden v. District of Columbia Dep't of Empl. Servs., 759 A.2d 186, 2000 D.C. App. LEXIS 217 (2000).

Generally, burden is on the party asserting that a change of circumstances warrants modification of workers' compensation order to prove the change. D.C. Code 1981, § 36-324. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 703 A.2d 1225, 1997 D.C. App. LEXIS 264 (1997).

Where claimant seeking modification of workers' compensation award did not make preliminary showing of change in conditions, it was error to shift burden to employer to show that circumstances had not changed, specifically, that claimant still refused to cooperate in vocational rehabilitation. D.C. Code 1981, § 36-324. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 703 A.2d 1225, 1997 D.C. App. LEXIS 264 (1997).

Until party seeking modification of prior workers' compensation order shows a change of circumstances related to his voluntary limitation of income as determined in prior order, employer has no burden to make any showing with respect to its efforts to secure his cooperation to avoid modification. D.C. Code 1981, § 36-324. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 703 A.2d 1225, 1997 D.C. App. LEXIS 264 (1997).

Generally, in a workers' compensation proceeding, burden is on employer to prove that work is available which the partially disabled worker can perform; employer can meet burden by proof short of offering the claimant a specific job or proving that some employer specifically offered claimant a job. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 703 A.2d 1225, 1997 D.C. App. LEXIS 264 (1997).

Hearing.

To obtain an evidentiary hearing on a modification petition under workers' compensation statute, claimant must make a threshold showing that "there is reason to believe that a change of conditions has occurred." D.C. Code 1981,§ 36-324. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 703 A.2d 1225, 1997 D.C. App. LEXIS 264 (1997).

Claimant failed to make a preliminary showing of a change of nonmedical circumstances warranting evidentiary hearing on petition to modify prior workers' compensation order. D.C. Code 1981, § 36-324. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 703 A.2d 1225, 1997 D.C. App. LEXIS 264 (1997).

Worker was not entitled to evidentiary hearing to determine whether there was sufficient evidence showing that change of condition had occurred after denial of workers' compensation benefits to worker entitling worker to further benefit payments; director of Department of Employment Services concluded that preliminary hearing given to worker was rational means of reaching determination of whether there was sufficient evidence that change of condition had occurred, and worker's right to evidentiary hearing is triggered only when there is reason to believe that change of conditions has occurred. D.C. Code 1981, §§ 36-320, 36-324. Snipes v. District of Columbia Dep't of Employment Services, 542 A.2d 832, 1988 D.C. App. LEXIS 87 (1988).

In general.

Where employee who sustained hernia was awarded compensation for temporary partial disability, and deterioration in employee's general health, making surgical treatment of hernia impossible, resulted in permanent partial disability, there was a "change of condition" within Longshoremen's Compensation Act, so as to authorize modification of award. Longshoremen's and Harbor Workers' Compensation Act, § 8(e), and § 22, as amended in 1934, 48 Stat. 807, 33 U.S.C. §§ 908(e), 922; Act May 17, 1928, D.C. Code 1929, T. 19, §§ 11, 12, 33 U.S.C. § 901 note. New Amsterdam Casualty Co. v. Cardillo, 108 F.2d 492, 1939 U.S. App. LEXIS 4653 (1939).

Workers' compensation provision regarding a claim for modification which imposes a one-year limitation from either the date of the last payment of compensation or the rejection of a claim was not intended as a restrictive provision, rather, consistent with the act's humanitarian purpose, that section creates an exception to principles of claim and issue preclusion and provides a procedure that enables claimants to revisit compensation awards. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 981 A.2d 1216, 2009 D.C. App. LEXIS 500 (2009).

Workers' compensation statute governing modification of awards provides a mechanism for reviewing issues previously decided in compensation orders and, when appropriate, for the modification of such orders. Fred F. Blanken & Co. v. D.C. Dep't of Empl. Servs., 825 A.2d 894, 2003 D.C. App. LEXIS 303 (2003).

Hearing examiner's denial of employer's motion to dismiss claimant's second application for modification of a workers' compensation award with prejudice was functional equivalent of the hearing examiner granting claimant's motion for reinstatement of first application, and thus, since the motion to reinstate was, for all practical purposes, granted, the action was restored to its predismissal status and no statute of limitations question was present. Fred F. Blanken & Co. v. D.C. Dep't of Empl. Servs., 825 A.2d 894, 2003 D.C. App. LEXIS 303 (2003).

Modification of a workers' compensation award is "appropriate" whenever "manifest error" or "manifest injustice" has attended the original finding of entitlement to benefits or determination of the amount. Mendez v. D.C. Dep't of Empl. Servs., 819 A.2d 959, 2003 D.C. App. LEXIS 145 (2003).

When a workers' compensation claimant injures himself and returns to work, but the original injury worsens, such as new symptoms manifesting themselves, and causes him to be unable to work again, the claimant may avail himself of a review procedure to modify the compensation order and seek additional benefits, without application of res judicata principles. D.C. Code 1981, § 36-324(a). Short v. Department of Empl. Servs., 723 A.2d 845, 1998 D.C. App. LEXIS 221 (1998).

Change of circumstances warranting modification of workers' compensation award pursuant to statute is not restricted to medical conditions; thus, it would not be unreasonable to recognize a change in the economic component, such as lack of availability of employment suitable to claimant's condition, as basis for change of circumstances warranting modification. D.C. Code 1981, § 36-324. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of

Empl. Servs., 703 A.2d 1225, 1997 D.C. App. LEXIS 264 (1997).

Notice.

Claimant had one year, following the time she first became aware, or should have become aware, of her new injury, a worsening of her prior symptoms from a work-related back injury, to file a new claim for compensation benefits under Workers' Compensation Act provision regarding a new claim for disability benefits for a new injury that arose from a work-related accident for which a claim had previously been filed, so long as that claim was not barred by res judicata, and she was not limited to filing a claim for modification, which imposed a one-year limitation from either the date of the last payment of compensation or the rejection of a claim. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 981 A.2d 1216, 2009 D.C. App. LEXIS 500 (2009).

Director of Department of Employment Services (DOES) was not entitled to adopt and apply to employer a new rule that an employer was required to provide an employee with notice and an opportunity to cure before applying for suspension of disability benefits; such a rule was not expressed in any statute or existing regulation, nor was it foreshadowed in previous DOES rulings, and thus, employer could not reasonably have been aware of such a requirement. Epstein v. D.C. Dep't of Empl. Servs., 850 A.2d 1140, 2004 D.C. App. LEXIS 272 (2004).

Worker was given sufficient notice that preliminary hearing was held to examine issue of whether there existed reason to believe that change of condition had occurred warranting further workers' compensation benefits; issue was directly contested in papers filed prior to granting of preliminary hearing, and worker had ample opportunity to clarify nature of hearing if she had any doubts about its scope. Snipes v. District of Columbia Dep't of Employment Services, 542 A.2d 832, 1988 D.C. App. LEXIS 87 (1988).

Orders which may be modified.

One-year limitations period for modifying workers' compensation awards did not bar claimant's claim for a schedule payment of permanent partial disability benefits where the issue of permanency was not considered in her prior compensation claim and award for temporary total disability wage loss benefits. D.C. Code 1981, §§ 36-308, 36-324(a). Capitol Hill Hosp. v. District of Columbia Dep't of Empl. Servs., 726 A.2d 682, 1999 D.C. App. LEXIS 71 (1999).

Statute permitting modification of workers' compensation orders generally presupposes modification of final decision, either by the Hearings and Adjudications Section (H&AS) of the Department of Employment Services (DOES) when decision was not appealed within 30 days, or by the Director of DOES after appeal; statutory references to claim "rejection" and "last payment" imply a final decision. D.C. Code 1981, §§ 36-322, 36-324. Georgetown Univ. Hosp. v. Department of Employment Servs., 659 A.2d 832, 1995 D.C. App. LEXIS 116 (1995).

When compensation order is still on appeal to Director of Department of Employment Service (DOES), modification statute generally does not apply, and party may not seek from the Hearings and Adjudication Section (H&AS) modification of that order, based on "additional evidence," unless and until the Director upon party's application, remands case for that purpose. D.C. Code 1981, §§ 36-322, 36-324. Georgetown Univ. Hosp. v. Department of Employment Servs., 659 A.2d 832, 1995 D.C. App. LEXIS 116 (1995).

When compensation order of the Hearings and Adjudications Section (H&AS) of the Department of Employment Services (DOES) is still on appeal to Director of the DOES without a remand for additional evidence, H&AS will not have jurisdiction over request for modification of that order, unless issue on which party seeks modification is entirely severable from issues pending before the Director. D.C. Code 1981, §§ 36-322, 36-324. Georgetown Univ. Hosp. v. Department of Employment Servs., 659 A.2d 832, 1995 D.C. App. LEXIS 116 (1995).

Hearings and Adjudications Section (H&AS) of the Department of Employment Services (DOES) lacked jurisdiction over request for modification of previously issued compensation order when that order was still on appeal to Director of DOES, where issues in modification request were not severable from issues before Director, and thus there was potential for conflict between modification order and Director's decision. D.C. Code 1981, §§ 36-322, 36-324. Georgetown Univ. Hosp. v. Department of Employment Servs., 659 A.2d 832, 1995 D.C. App. LEXIS 116 (1995).

Res judicata and collateral estoppel.

Res judicata did not preclude employer from seeking modification of original order awarding claimant workers' compensation benefits, where employer brought fact that claimant had received compensation payments for same injury under the law of another state to Department of Employment Services' (DOES) attention approximately two months after the order, and hearing examiner confirmed their existence; statute governing modification of awards if there was reason to believe that a change of conditions had occurred which raised issues concerning fact of eligibility created an exception to doctrine of res judicata, and claimant's disqualification for benefits due to double compensation should have been "manifest" at the

original hearing. Mendez v. D.C. Dep't of Empl. Servs., 819 A.2d 959, 2003 D.C. App. LEXIS 145 (2003).

Examiner's initial finding that claimant's alleged post-traumatic stress disorder was not work-related did not bar claimant from filing a modification petition to allege that he suffered from an aggravated mental illness, with a different diagnosis, that was a subsequent emergence of a work-related disability, where examiner's initial findings left open the possibilities that claimant had some initial work-related disability and that he might develop a future work-related disability. Washington Metro. Area Transit Auth. v. State Dep't of Empl. Servs., 770 A.2d 965, 2001 D.C. App. LEXIS 84 (2001).

Original workers' compensation order that ruled claimant was not entitled to a schedule award for a permanent partial disability to her leg was manifest error, and thus, res judicata did not preclude claimant from seeking a modification of that order, where claimant's physician attributed a 15 percent disability rating to claimant's knee and ankle. Walden v. District of Columbia Dep't of Empl. Servs., 759 A.2d 186, 2000 D.C. App. LEXIS 217 (2000).

Claimant made requisite threshold showing of a change in her condition, so as to be entitled to hearing on request for modification of original workers' compensation order that ruled she was not entitled to a schedule award for a permanent partial disability to her leg, where claimant offered a doctor's medical report indicating the presence of new symptoms in her knee and ankle and a significant increase in the extent of her disability. Walden v. District of Columbia Dep't of Empl. Servs., 759 A.2d 186, 2000 D.C. App. LEXIS 217 (2000).

Claimant who contended that his condition changed from the last payment of workers' compensation, meriting a modification of benefits, was not seeking compensation for same injury that was subject of prior award, and thus, present claim was not barred by doctrine of res judicata. D.C. Code 1981, § 36-324(a). Short v. Department of Empl. Servs., 723 A.2d 845, 1998 D.C. App. LEXIS 221 (1998).

Current symptoms of claimant, who requested modification of prior workers' compensation order due to an alleged change in condition, were not identical to those he experienced at time of previous award, and thus present claim was not barred by doctrine of collateral estoppel, even though factual issues were similar to those litigated in prior proceeding. D.C. Code 1981, § 36-324. Short v. Department of Empl. Servs., 723 A.2d 845, 1998 D.C. App. LEXIS 221 (1998).

While both res judicata and collateral estoppel apply in administrative agency procedures, the Workers' Compensation Act creates a specific procedure to revisit issues previously decided by a compensation order. D.C. Code 1981, § 36-324(a). Short v. Department of Empl. Servs., 723 A.2d 845, 1998 D.C. App. LEXIS 221 (1998).

Review.

When a workers' compensation claimant injures himself, returns to work, but the original injury worsens, causing him to be unable to work again, the claimant may avail himself of a review procedure to modify the compensation order and seek additional benefits. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 981 A.2d 1216, 2009 D.C. App. LEXIS 500 (2009).

Court of Appeals would defer to Department of Employment Services (DOES) director's interpretation of statutory subsection establishing one year limitations period for requesting modification of workers' compensation benefits as requiring existing compensation order before modification may be requested and granted, given that such interpretation gives meaning to statutory phrase "new compensation order," as provided in separate subsection indicating that, upon completion of review of modification request, "new compensation order" shall issue. Sodexho Marriott Corp. v. D.C. Dep't of Empl. Servs., 858 A.2d 452, 2004 D.C. App. LEXIS 444 (2004).

Remand of workers' compensation case concerning modification of claimant's permanent partial disability award was required for Department of Employment Services (DOES) to determine whether claimant satisfied the "reason to believe" requirement by presenting evidence of a change of condition using medical evidence obtained after the filing of the application for modification, whether such an analysis was even necessary since the employer did not request a hearing, and what was proper form of an application for modification, as issues required interpretation of the relevant statute. Fred F. Blanken & Co. v. D.C. Dep't of Empl. Servs., 825 A.2d 894, 2003 D.C. App. LEXIS 303 (2003).

Remand of workers' compensation case was required for Department of Employment Services (DOES) to determine whether claimant, on his application to modify disability award from partial to total disability, met his burden to prove a change in economic condition, and in making that decision, DOES should consider the effect that claimant's voluntary resignation from linen services job had on his changed economic condition and whether, given that decision to voluntarily limit his income, the evidence presented was nevertheless sufficient to shift the burden to employer to prove employability. Cather v. D.C. Dep't of Empl. Servs., 808 A.2d 766, 2002 D.C. App. LEXIS 558 (2002).

Court of Appeals' standard of review mirrored that which the Director of the Department of Employment Services (DOES) was bound to apply in reviewing hearing examiner's finding that workers' compensation claimant's disability had ended. Canlas v. District of Columbia Dep't of Empl. Servs., 723 A.2d 1210, 1999 D.C. App. LEXIS 3 (1999).

Scope of review of modification issues in workers' compensation case requires Court of Appeals to decide whether the agency made the threshold determination under the statute regarding change in claimant's condition and whether its determination is supported by substantial evidence in the record. D.C. Code 1981, §§ 1-1510(a)(3), 36-324. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 703 A.2d 1225, 1997 D.C. App. LEXIS 264 (1997).

Temporary total disability.

Absent extraordinary circumstances that involve an amputation or its functional equivalent, temporary total disability (TTD) benefits will not be awarded for the same injury after the workers' compensation claimant has reached maximum medical improvement and a schedule award has been made, even if the request for additional TTD benefits is made within one year of the schedule award. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 965 A.2d 1, 2009 D.C. App. LEXIS 15 (2009).

Workers' compensation claimant's additional surgery on left knee was not equivalent of amputation, and thus claimant was not entitled to additional temporary total disability (TTD) benefits after claimant had already received schedule award based on same knee injury even though request for TTD benefits was made within one year of schedule award. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 965 A.2d 1, 2009 D.C. App. LEXIS 15 (2009).

Weight and sufficiency of evidence.

Order of deputy commissioner modifying prior order awarding compensation under Longshoremen's and Harbor Workers' Compensation Act, based on permanent partial disability rating of 50% could not be sustained on record evidence respecting change in condition as ground. Longshoremen's and Harbor Workers' Compensation Act, § 22, 33 U.S.C. § 922. Pistorio v. Einbinder, 351 F.2d 204, 1965 U.S. App. LEXIS 4530 (C.A.D.C. 1965).

Evidence held sufficient to sustain order of Compensation Commission directing continuance of compensation and further medical treatment, notwithstanding conflict in testimony as to whether claimant's condition was due to disease. Longshoremen's and Harbor Workers' Compensation Act, § 7, 33 U.S.C. § 907. Aetna Life Ins. Co. v. Hoage, 76 F.2d 435, 1935 U.S. App. LEXIS 2569 (1935).

Substantial evidence supported determination of Department of Employment Services (DOES) director that stipulation, in which employer agreed to pay temporary total disability benefits for specified time period, did not constitute complete and final settlement of claim that triggered running of one-year limitations period for requesting modification of benefits, but instead constituted voluntary payment of benefits; stipulation acknowledged possibility of future claims. Sodexho Marriott Corp. v. D.C. Dep't of Empl. Servs., 858 A.2d 452, 2004 D.C. App. LEXIS 444 (2004).

Substantial evidence supported hearing examiner's finding that claimant presented new evidence of a deterioration in his mental condition that demonstrated the existence of a work-related disability; claimant's medical expert testified that although claimant may have suffered from post-traumatic stress disorder immediately following a work-related electrical shock, those symptoms abated, and claimant was currently suffering from progressively worsening personality change and mood disorder caused by organic brain damage. Washington Metro. Area Transit Auth. v. State Dep't of Empl. Servs., 770 A.2d 965, 2001 D.C. App. LEXIS 84 (2001).

Evidence was sufficient to support Department of Employment Services (DOES) hearing examiner's finding that workers' compensation claimant was no longer disabled as of date of second independent medical evaluation (IME); IME physician concluded that claimant had recovered adequately from his injuries, and he explained at length why he disagreed with the diagnosis of continuing disability made by claimant's four treating doctors. Canlas v. District of Columbia Dep't of Empl. Servs., 723 A.2d 1210, 1999 D.C. App. LEXIS 3 (1999).

Substantial evidence supported hearing examiner's finding that workers' compensation claimant no longer suffered from a work-related injury three months after slipping at work; physician who examined claimant for employer's compensation carrier opined that injury had completely healed by that date, and several treating physicians opined that claimant's pain was not attributable to injury from slipping incident. Washington Vista Hotel v. Department of Empl. Servs., 721 A.2d 574, 1998 D.C. App. LEXIS 218 (1998).

Compensability presumption was not sufficient, by itself, to establish that claimant's work-related injury aggravated his pre-existing neck and back condition, for purposes of awarding additional workers' compensation benefits. D.C. Code 1981, § 36-321(1). Washington Vista Hotel v. Department of Empl. Servs., 721 A.2d 574, 1998 D.C. App. LEXIS 218 (1998).

Where moving party fails to offer any evidence warranting modification of workers' compensation award, nonmoving party should prevail under modification statute even if he produces no evidence at all. D.C. Code 1981, § 36-324. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs., 703 A.2d 1225, 1997 D.C. App. LEXIS 264 (1997).

Evidence supported discontinuation of temporary total disability benefits for employee who had slipped and fallen and who complained of lower back pain; x-rays showed spine to be normal; bone scan and two CAT scans of lumbar spine showed no evidence of abnormality or disc herniation; and magnetic resonance imaging indicated at most minimal encroachment of disc on nerve. King v. District of Columbia Dep't of Empl. Servs., 560 A.2d 1067, 1989 D.C. App. LEXIS 123 (1989).

Hearing examiner's finding that there was no reason to believe that change of condition had occurred in worker to justify further workers' compensation benefits was supported by evidence which showed that worker had no residual evidence of work-related back injury and could resume regular work without restrictions, and by evidence which indicated that new psychological conditions worker asserted had developed were not related to original back injury. Snipes v. District of Columbia Dep't of Employment Services, 542 A.2d 832, 1988 D.C. App. LEXIS 87 (1988).

Hearing officer, who determined that worker's compensation claimant was no longer disabled, could rely on treating doctor's statement with regard to test results even though test results themselves were not admitted into evidence. Porter v. District of Columbia Dep't of Employment Services, 518 A.2d 1020, 1986 D.C. App. LEXIS 494 (1986).

Statement of claimant's treating physician there were no objective findings to which claimant's persistent complaints and pain and weakness in her arm could be attributed, that results of myelogram were normal, and that he saw no reason why claimant should not be able to think about returning to work, supported hearing examiner's determination that claimant was no longer disabled and that termination of benefits by employer was justified. Porter v. District of Columbia Dep't of Employment Services, 518 A.2d 1020, 1986 D.C. App. LEXIS 494 (1986).

§ 32-1525. Hearings before Mayor.

(a) In making an investigation or inquiry or conducting a hearing the Mayor shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter, but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties. Prior to the hearing before the Mayor the parties may conduct such discovery, including but not limited to the use of interrogatories and depositions as, in the opinion of the Mayor, will be helpful in determining the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(b) Hearings before the Mayor shall be open to the public and shall be stenographically reported. The Mayor shall by regulation provide for the preparation of a record of the hearings and other proceedings before the Mayor.

(July 1, 1980, D.C. Law 3-77, § 26, 27 DCR 2503.)

Prior Codifications. — 1981 Ed., § 36-325.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

CASE NOTES

In general.

The Workers' Compensation Act delegated comprehensive powers to the Mayor, which the Mayor, pursuant to the statute, in turn delegated this authority to the Director of the Department of Employment Services (DOES). Lee v. District of Columbia Dep't of Employment Services, 509 A.2d 100, 1986 D.C. App. LEXIS 327 (1986).

§ 32-1526. Attendance of witnesses.

No person shall be required to attend as a witness in any proceeding before the Mayor at more than 25 miles of the place of the hearing, unless his lawful mileage and fee for 1 day's attendance shall be first paid or tendered to him; but the testimony of any witness including that of an interested party may be taken by deposition or interrogatories according to the rules of practice of the Superior Court of the District of Columbia.

(July 1, 1980, D.C. Law 3-77, § 27, 27 DCR 2503.)

Prior Codifications. — 1981 Ed., § 36-326.
Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

§ 32-1527. Witness fees.

Witnesses summoned in a proceeding before the Mayor or whose depositions are taken shall receive the same fees and mileage as witnesses in the Superior Court of the District of Columbia.

(July 1, 1980, D.C. Law 3-77, § 28, 27 DCR 2503.)

Prior Codifications. — 1981 Ed., § 36-327.
Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-15301.

§ 32-1528. Costs in proceedings brought without reasonable grounds; penalty for unreasonable delay in payment of compensation.

(a) If the trier of fact or court having jurisdiction of proceedings in respect of any claim or compensation order determines that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

(b) If the Mayor or court determines that an employer or carrier has delayed the payment of any installment of compensation to an employee in bad faith, the employer shall pay to the injured employee, for the duration of the delay, the actual weekly wage of the employee for the period that the employee is eligible to receive workers' compensation benefits under this chapter. The penalty shall be in addition to any amount paid pursuant to § 32-1515.

(July 1, 1980, D.C. Law 3-77, § 29, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(f), 37 DCR 6890.)

Prior Codifications. — 1981 Ed., § 36-328.
Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.
Legislative history of Law 8-198. — For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 32-1542.01.
Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 32-1501.

§ 32-1529. Powers of Mayor.

(a) The Mayor shall have the power to preserve and enforce order during any such proceedings, to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things in conformity with law which may be necessary to enable him to effectively discharge the duties of his office.

(b) If any person in proceedings before the Mayor disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the Mayor shall certify the facts to the Superior Court of the District of Columbia which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the Court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the Court.

(July 1, 1980, D.C. Law 3-77, § 30, 27 DCR 2503.)

Prior Codifications. — 1981 Ed., § 36-329.
Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

CASE NOTES

In general.
The Workers' Compensation Act delegated comprehensive powers to the Mayor, which the Mayor, pursuant to the statute, in turn delegated this authority to the Director of the Department of Employment Services (DOES). Lee v. District of Columbia Dep't of Employment Services, 509 A.2d 100, 1986 D.C. App. LEXIS 327 (1986).

§ 32-1530. Attorney fees.

(a) If the employer or carrier declines to pay any compensation on or before the 30th day after receiving written notice from the Mayor that a claim for compensation has been filed, on the grounds that there is no liability for compensation within the provisions of this chapter, and the person seeking benefits thereafter utilizes the services of an attorney-at-law in the successful prosecution of his claim, there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney's fee against the

employer or carrier in an amount approved by the Mayor, or court, as the case may be, which shall be paid directly by the employer or carrier to the attorney for the claimant in a lump sum after the compensation order becomes final.

(b) If the employer or carrier pays or tenders payment of compensation without an award pursuant to this chapter, and thereafter a controversy develops over the amount of additional compensation, if any, to which the employee may be entitled, the Mayor shall recommend in writing a disposition of the controversy. If the employer or carrier refuse to accept such written recommendation, within 14 days after its receipt by them, they shall pay or tender to the employee in writing the additional compensation, if any, to which they believe the employee is entitled. If the employee refuses to accept such payment or tender of compensation and thereafter utilizes the services of an attorney-at-law, and if the compensation thereafter awarded is greater than the amount paid or tendered by the employer or carrier, a reasonable attorney's fee based solely upon the difference between the amount awarded and the amount tendered or paid shall be awarded in addition to the amount of compensation. The foregoing sentence shall not apply if the controversy relates to degree or length of disability, and if the employer or carrier offers to submit the case for evaluation by physicians employed or selected by the Mayor, as authorized in § 32-1507(e), and offers to tender an amount of compensation based upon the degree or length of disability found by the independent medical report at such time as an evaluation of disability can be made. If the claimant is successful in review proceedings before the Mayor or court in any such case, an award may be made in favor of the claimant and against the employer or carrier for a reasonable attorney's fee for claimant's counsel in accordance with the above provisions. In all other cases any claim for legal services shall not be assessed against the employer or carrier.

(c) In all cases, fees for attorneys representing the claimant shall be approved in the manner herein provided. If any proceedings are had before the Mayor or any court for review of any actions, award, order or decision, the Mayor or court may approve an attorney's fee for the work done before him or it, as the case may be, by the attorney for the claimant. An approved attorney's fee, in cases in which the obligation to pay the fee is upon the claimant, may be made a lien upon the compensation due under an award, and the Mayor or court shall fix in the award approving the fee such lien and manner of payment.

(d) In cases where an attorney's fee is awarded against an employer or carrier there may be further assessed against such employer or carrier as costs, fees and mileage for necessary witnesses attending the hearing at the instance of claimant. Both the necessity for the witness and the reasonableness of the fees of expert witnesses must be approved by the Mayor, or the court, as the case may be. The amounts awarded against the employer or carrier as attorney's fees, costs, fees and mileage of witnesses shall not in any respect affect or diminish the compensation payable under this chapter.

(e) Any person who receives any fees, other consideration or any gratuity on account of services rendered as a representative of a claimant, unless such consideration or gratuity is approved by the Mayor or court, or who makes it

a business to solicit employment for a lawyer, or for himself in respect of any claim or award for compensation, shall upon conviction thereof for each offense be punished by a fine of not more than $1,000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment.

(f) At no time shall an attorney's fee be approved in excess of 20% of the actual benefit secured through the efforts of the attorney. This provision applies to all benefits secured through the efforts of an attorney, including settlements provided for under this chapter.

(July 1, 1980, D.C. Law 3-77, § 31, 27 DCR 2503.)

Prior Codifications. — 1981 Ed., § 36-330.
Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

CASE NOTES

Analysis

Construction with other laws.
Declining recommendation.
Dismissal.
Due process.
In general.
Limit on amount of award.

Construction with other laws.

In light of statute providing that once claim has been filed with Mayor, no further written claims are necessary, statute providing for attorney fees upon refusal of employer to pay any compensation within 30 days of receiving written notice must refer to initial claim, and thus each request for compensation is not a new and separate "claim for compensation" so as to trigger the 30-day period, but simply presents different issues that must be addressed with respect to the claim. D.C. Code 1981, §§ 36-314(a), 36-330(a). C & P Tel. Co. v. District of Columbia Dep't of Employment Servs., 638 A.2d 690, 1994 D.C. App. LEXIS 38 (1994).

Declining recommendation.

Workers' compensation attorney fees statute, which required employer to pay attorney fees if it failed to follow a mayor's written recommendation regarding the payment of additional benefits within 14 days, did not authorize award of attorney fees to workers' compensation claimant; mayor recommended denying claimant's petition for additional benefits, and claimant, not employer, rejected the recommendation of mayor. Providence Hosp. v. D.C. Dep't of Empl. Servs., 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

Workers' compensation law's attorney fee statute, requiring employer to pay attorney fees and costs only if it refuses after 14 days to pay additional compensation as recommended by mayor in writing, did not authorize award of attorney fees to claimant, given that employer never received recommendation by mayor to pay claim. D.C. Code 1981, § 36-330(b). National Geographic Soc'y v. District of Columbia Dep't of Empl. Servs., 721 A.2d 618, 1998 D.C. App. LEXIS 236 (1998).

Under workers' compensation law, award of attorney fees is appropriate only where controversy develops over additional compensation and employer declines to accept mayor's recommendation for resolution within 14 days of its receipt. D.C. Code 1981, § 36-330(b). National Geographic Soc'y v. District of Columbia Dep't of Empl. Servs., 721 A.2d 618, 1998 D.C. App. LEXIS 236 (1998).

Dismissal.

Dismissal of employer's application for formal hearing to challenge Office of Workers' Compensation's (OWC's) informal recommendation for continuation of disability benefits, after employer filed consent motion to withdraw the application due to resolution of contested issues, was not "award of compensation" that was greater than amount paid or tendered by employer, as condition precedent to award of attorney fees to claimant; dismissal order did not reach merits of parties' contested issues but was procedural mechanism undertaken by agency in light of parties' voluntary resolution of claim. Fluellyn v. District of Columbia Dept. of Employment Services, 2012 WL 2504914 (2012).

Due process.

Rules regulating attorney fees for contested workers' compensation claims arising under Comprehensive Merit Personnel Act did not violate due process. U.S. Const.Amend. 5; D.C. Code 1981, § 1-624.1 et seq.; D.C.Mun.Regs. title 7, §§ 109.1-109.6, 1320.3. Cornelious v. District of Columbia Employees' Compensation Appeals Bd., 704 A.2d 853, 1997 D.C. App. LEXIS 251 (1997).

In general.

Workers' compensation law's attorney fee

statute does not authorize the payment of attorney fees and costs where employer and its carrier did not decline to pay additional compensation upon recommendation of mayor or its agent. D.C. Code 1981, § 36-330(b). National Geographic Soc'y v. District of Columbia Dep't of Empl. Servs., 721 A.2d 618, 1998 D.C. App. LEXIS 236 (1998).

Under Workers' Compensation Act, person claiming compensation may be entitled to recover attorney fees in only two situations: if employer refuses to pay any compensation for work-related injury within 30 days of receiving written notice from Mayor of claim for compensation and claimant consequently uses services of attorney to prosecute successfully his or her claim; or if employer pays or tenders payment of compensation without award but later refuses to pay additional compensation claimed, within 14 days of receiving recommendation by Mayor that claim is justified, and claimant uses services of attorney to recover full amount claimed. D.C. Code 1981, § 36-330(a, b). C & P Tel. Co. v. District of Columbia Dep't of Employment Servs., 638 A.2d 690, 1994 D.C. App. LEXIS 38 (1994).

Employer which had provided benefits in the form of medical services after worker had filed workers' compensation claim did not decline to pay any compensation within 30-day period, for purposes of attorney fee statute applicable to such failure, and thus when worker sought compensation for permanent partial disability and employer accepted responsibility for the injury but not the disability rating, employer was not liable for failing to pay permanent partial disability within 30 days, where it paid within 14 days of informal conference recommendation. D.C. Code 1981, § 36-330(a, b). C & P Tel. Co. v. District of Columbia Dep't of Employment Servs., 638 A.2d 690, 1994 D.C. App. LEXIS 38 (1994).

Where employer, which had provided medical services, accepted responsibility for injury but not disability rating, employer bore no burden to schedule medical examination and failure to explain why it had not requested or obtained independent examination before informal conference did not render inapplicable statute providing for attorney fees only if employer fails to pay within 14 days of informal conference recommendation. D.C. Code 1981, §§ 36-307(e), 36-330(b). C & P Tel. Co. v. District of Columbia Dep't of Employment Servs., 638 A.2d 690, 1994 D.C. App. LEXIS 38 (1994).

In determining whether employer was liable for attorney fees, Director of the Department of Employment Services was bound by hearing examiner's findings, supported by substantial evidence, that employer did not controvert claim but only disability rating and that employer had requested independent examination. C & P Tel. Co. v. District of Columbia Dep't of Employment Servs., 638 A.2d 690, 1994 D.C. App. LEXIS 38 (1994).

Limit on amount of award.

Statutory limit on attorney fee award in workers' compensation case to 20% of actual benefits secured through efforts of attorney applies to all awards in contested cases, regardless of whether fees are paid by claimant, employer or employer's insurance carrier. D.C. Code 1981, § 36-330(f). Baghini v. District of Columbia Dep't of Employment Services, 525 A.2d 1027, 1987 D.C. App. LEXIS 355 (1987).

§ 32-1531. Employer record of injury or death.

Every employer shall keep a record with respect of any injury to an employee. Such record shall contain such information of disease, other disability, or death in respect of such injury as the Mayor may by regulation require, and shall be available for inspection by an authorized representative of the Mayor or of any agency of the government of the District of Columbia at such times and under such conditions as the Mayor may by regulation prescribe.

(July 1, 1980, D.C. Law 3-77, § 32, 27 DCR 2503.)

Prior Codifications. — 1981 Ed., § 36-331.
Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

§ 32-1532. Employer reports.

(a) Within 10 days from the date of any injury or death or from the date that the employer has knowledge of a disease or infection in respect of such injury, the employer shall send to the Mayor a report setting forth: (1) the name, address, and business of the employer; (2) the name, address, and occupation

of the employee; (3) the cause and nature of the injury or death; (4) the year, month, day, and hour when and the particular locality where the injury or death occurred; and (5) such other information as the Mayor may require. The employer shall also send a copy of the report together with such other information as may be required by the Mayor to the Department of Employment Services. The employer shall send to the employee or the employee's next of kin, by certified mail, return receipt requested, concurrent with the submission of the report to the Department of Employment Services, a statement of the employee's rights and obligations pursuant to this chapter, including the right to file a claim for compensation within one year from the date of injury or death.

(b) Additional reports in respect of such injury and of the condition of such employee shall be sent by the employer to the Mayor at such times and in such manner as the Mayor may prescribe.

(c) Any report provided for in subsection (a) or (b) of this section shall not be evidence of any fact stated in such report in any proceeding in respect of such injury or death on account of which the report is made.

(d) The mailing of any such report and copy in a stamped envelope, within the time prescribed in subsection (a) or (b) of this section, to the Mayor shall be a compliance with this section.

(e) Any employer who fails or refuses to send any report required of him by this section shall be subject to a civil penalty not to exceed $1,000 for each such failure or refusal.

(f) Where the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knowledge of any injury or death of an employee and fails, neglects, or refuses to file report thereof as required by the provisions of subsection (a) of this section, the limitations in § 32-1514(a) shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the employer or the carrier, until such report shall have been furnished as required by the provisions of subsection (a) of this section.

(g) On receiving the report provided by subsection (a) of this section, the Mayor shall notify the injured employee of the employee's rights and obligations under this chapter.

(July 1, 1980, D.C. Law 3-77, § 33, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(h), 46 DCR 891.)

Prior Codifications. — 1981 Ed., § 36-332.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 12-229. — For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

§ 32-1533. Penalty for misrepresentation.

Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this chapter shall be guilty of a misdemeanor and on conviction thereof shall be

punished by a fine of not to exceed $1,000 or by imprisonment of not to exceed 1 year, or by both such fine and imprisonment.

(July 1, 1980, D.C. Law 3-77, § 34, 27 DCR 2503.)

Prior Codifications. — 1981 Ed., § 36-333.
Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

§ 32-1534. Security for payment of compensation.

(a) Every employer shall secure the payment of compensation under this chapter: (1) by insuring and keeping insured the payment of such compensation with any stock company or mutual company or association, or with any person or fund, while such person or fund is authorized: (A) under the laws of the United States, the District of Columbia, or of any state, to insure workers' compensation; and (B) by the Mayor to insure payment of compensation under this chapter; or (2) by furnishing satisfactory proof to the Mayor of his financial ability to pay such compensation and receiving an authorization from the Mayor to pay such compensation directly. The Mayor may, as a condition to such authorization, require such employer to deposit with the District of Columbia Treasurer either an indemnity bond or securities (at the option of the employer) of a kind and in an amount determined by the Mayor, and subject to such conditions as the Mayor may prescribe, which shall include authorization to the Mayor, in case of default, to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this chapter. Any employer securing compensation in accordance with the provisions of this subsection shall be known as a self-insurer.

(b) In granting authorization to any carrier to insure payment of compensation under this chapter the Mayor may take into consideration the recommendation of any District authority having supervision over carriers. Any carrier so authorized by the Mayor shall maintain a representative in the District of Columbia who can fulfill all of the obligations of the carrier under this chapter and who shall maintain a file of all active claims being serviced by the carrier in the District of Columbia. The Mayor may suspend or revoke the authorization of any carrier to insure payment of compensation under this chapter for good cause shown after a hearing at which the carrier shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred.

(July 1, 1980, D.C. Law 3-77, § 35, 27 DCR 2503.)

Section references. — This section is referred to in §§ 32-1501, 32-1539, and 32-1541.
Prior Codifications. — 1981 Ed., § 36-334.
Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

§ 32-1535. Compensation for injuries where third persons are liable.

(a) If, on account of a disability or death for which compensation is payable under this chapter, the person entitled to such compensation determines that some person other than those enumerated in § 32-1504(b) is liable for damages, he need not elect whether to receive such compensation or to recover damages against such third person.

(b) Acceptance of such compensation under an award in a compensation order filed with the Mayor shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within 6 months after such award.

(c) A payment made pursuant to §§ 32-1509 and 32-1540(d)(1) shall operate as an assignment to the employer of all rights of the legal representative of the deceased (hereinafter referred to as "representative") to recover damages against such third person.

(d) Such employer on account of such assignment may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting such proceeding.

(e) Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to:

(A) The expenses incurred by him in respect to such proceedings or compromise (including a reasonable attorney's fee as determined by the Mayor);

(B) The cost of all benefits actually furnished by him to the employee under § 32-1507;

(C) All amounts paid as compensation; and

(D) The present value of all amounts thereafter payable as compensation, such present value to be computed in accordance with a schedule prepared by the Mayor, and the present value of the cost of all benefits thereafter to be furnished under § 32-1507, to be estimated by the Mayor, and the amounts so computed and estimated to be retained by the employer as a trust fund to pay such compensation and the cost of such benefits as they become due, and to pay any sum finally remaining in excess thereof to the person entitled to compensation or to the representative; and

(2) The employer shall pay any excess to the person entitled to compensation or to the representative, less one fifth of such excess which shall belong to the employer.

(f) If the person entitled to compensation institutes proceedings within the period ascribed in subsection (b) of this section, the employer shall be required to pay as compensation under this chapter a sum equal to the excess of the amount which the Mayor determines is payable on account of such injury or death over the amount recovered against such third person.

(g) If compromise with such third person is made by the person entitled to compensation or such representative of an amount less than the compensation

to which such person or representative would be entitled under this chapter, the employer shall be liable for compensation as determined in subsection (f) of this section, only if the written approval of such compromise is obtained from the employer and his insurance carrier by the person entitled to compensation or such representative at the time of or prior to such compromise in a form and manner prescribed by the Mayor.

(h) Where the employer is insured and the insurance carrier has assumed the payment of the compensation, the insurance carrier shall be subrogated to all the rights of the employer under this section.

(i) The right to compensation or benefits under this chapter shall be the exclusive remedy to an employee when he is injured, or to his eligible survivors or legal representative if he is killed, by the negligence or wrong of any other person or persons in the same employ; provided, that this provision shall not affect the liability of a person other than an officer or employee of the employer.

(July 1, 1980, D.C. Law 3-77, § 36, 27 DCR 2503.)

Section references. — This section is referred to in § 32-1507.

Prior Codifications. — 1981 Ed., § 36-335.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

CASE NOTES

ANALYSIS

Compromise and settlement.
Conflicts of law.
Construction and application.
Costs.
Employer approval.
Equal protection.
In general.
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Time to commence action.

Compromise and settlement.

In defining word "compromise" in statute providing for relief of employer's liability when employee's claim against third party is compromised without employer's consent, crucial factor appears to be determination of damages by mutual agreement or negotiation between the parties, rather than by the independent evaluation of a trial judge. Colbert v. D.C. Dep't of Empl. Servs., 933 A.2d 817, 2007 D.C. App. LEXIS 587 (2007).

Agreeing to binding arbitration is a "compromise" within the meaning of provision of Workers' Compensation Act prohibiting an employee injured on the job by a third person from recovering workers' compensation benefits if a claim for damages against the third person is compromised without the written approval of the employer. Colbert v. D.C. Dep't of Empl. Servs., 933 A.2d 817, 2007 D.C. App. LEXIS 587 (2007).

"Humanitarian purpose" of workers' compensation statute was irrelevant in determining whether employee was excused from obtaining approval from employer and insurer of settlement of alleged claim against third party. D.C. Code 1981, §§ 36-321(1), 36-335(g). 4934, Inc. v. District of Columbia Dep't of Employment Services, 605 A.2d 50, 1992 D.C. App. LEXIS 83 (1992).

Statute requiring injured worker to obtain written approval from employer and workers' compensation insurer of any compromise of claims against third parties did not apply to injured employee who was shot by son of Brazilian ambassador and filed claim against ambassador, son, and government of Brazil; although employee received $30,000 payment from government of Brazil and subsequently dismissed his claims, claims were barred by diplomatic immunity and treaty, and employee's attorney knew claims were unfounded before the suit was filed. D.C. Code 1981, § 36-335(g). 4934, Inc. v. District of Columbia Dep't of Employment Services, 605 A.2d 50, 1992 D.C. App. LEXIS 83 (1992).

Conflicts of law.

Virginia, rather than District of Columbia, law applied to hold employer's workers' compensation carrier liable for pro rata share of attorney fees incurred in third-party suit by employee for injuries sustained in aircraft crash in District of Columbia; Virginia's policy would be most advanced and Virginia was jurisdiction with stronger interests, as District of Columbia Workers' Compensation Act said nothing about right of employee to seek attor-

ney fees from employer or carrier in connection with third-party action for civil damages, and contacts of injured party and her workers' compensation claim to Virginia were extensive as she lived and worked in Virginia. D.C. Code 1981,§ 36-335(f); Va.Code 1950, § 65.1-43. Felch v. Air Florida, Inc., 866 F.2d 1521, 1989 U.S. App. LEXIS 1131 (C.A.D.C. 1989).

Construction and application.

Workers' Compensation Act allows a worker injured on the job by a third party to sue the third party without forfeiting the right to workers' compensation from his or her employer, so long as the amount recovered from the third party is less than the entitled employer compensation. Colbert v. D.C. Dep't of Empl. Servs., 933 A.2d 817, 2007 D.C. App. LEXIS 587 (2007).

Department of Employment Services' (DOES) decision that workers' compensation claimant's unauthorized settlement with the driver of the other car barred her claim for compensation for injuries resulting from automobile accident that occurred in the course of her employment was reasonable interpretation of statute providing that, if there is compromise between the employee and the third party, the employer is liable for workers' compensation only if the written approval of such compromise is obtained from the employer and his insurance carrier. Pannell-Pringle v. D.C. Dep't of Empl. Servs., 806 A.2d 209, 2002 D.C. App. LEXIS 514 (2002).

Supreme Court's interpretation of federal Longshore and Harbor Workers' Compensation Act (LHWCA) was persuasive precedent in interpreting language of District of Columbia Workers' Compensation Act which was enacted after federal statute and which borrowed language from federal statute on whether injured employee could recover litigation expenses in third-party tort action after employer's carrier had paid benefits. D.C. Code 1981, §§ 36-301 et seq., 36-335; Longshore and Harbor Workers' Compensation Act, §§ 1 et seq., 33, 33 U.S.C. §§ 901 et seq., 933. Nguyen v. Liberty Mut. Ins. Co., 611 A.2d 541, 1992 D.C. App. LEXIS 191 (1992).

Costs.

Evidence supported finding that litigation costs in third-party tort action were to be divided pro rata between employee and employer's workers' compensation carrier. D.C. Code 1981, §§ 17-305(a), 36-335. Nguyen v. Liberty Mut. Ins. Co., 611 A.2d 541, 1992 D.C. App. LEXIS 191 (1992).

Any division of litigation costs between employee who brings third-party suit and employer or employer's workers' compensation carrier who joins in that suit cannot be compelled unless employer or carrier and employee agree to division. D.C. Code 1981, § 36-335. Nguyen v. Liberty Mut. Ins. Co., 611 A.2d 541, 1992 D.C. App. LEXIS 191 (1992).

Terms "employee" and "employer" could not be interchanged in workers' compensation statute in order to allow employee to recover litigation expenses from employer's workers' compensation carrier for third-party tort action. D.C. Code 1981, § 36-335. Nguyen v. Liberty Mut. Ins. Co., 611 A.2d 541, 1992 D.C. App. LEXIS 191 (1992).

Employer approval.

Purpose of requiring employer's approval of employee's compromise of claim against third party is to prevent the employer from being prejudiced by a low settlement that would leave the employer liable for the remainder of the employee's entitled workers' compensation. Colbert v. D.C. Dep't of Empl. Servs., 933 A.2d 817, 2007 D.C. App. LEXIS 587 (2007).

Workers' Compensation Act prohibits an employee injured on the job by a third party from recovering workers' compensation benefits if a suit against the third party is compromised without the written approval of the employer. Colbert v. D.C. Dep't of Empl. Servs., 933 A.2d 817, 2007 D.C. App. LEXIS 587 (2007).

Equal protection.

District of Columbia workers' compensation statute causing employee's acceptance of workers' compensation to operate as assignment to employer of all rights against third parties, unless employee commences action against such third parties within six months, did not violate principles of equal protection by effectively making such employees' claims subject to six-month limitations period, as statute was rationally related to interest in prompt and orderly resolution of workers' compensation claims. D.C. Code 1981, § 36-335; U.S.C. Const.Amend. 14. Smith v. Ogden Allied Servs., 842 F. Supp. 571, 1994 U.S. Dist. LEXIS 1184 (1994).

In general.

Under District of Columbia law, employer's voluntary monthly compensation payments to deceased worker's personal representative did not operate as assignment to employer of all of personal representative's rights to recover damages against manufacturer of asphalt distributing machine that killed worker, even though employer had asserted lien for its payments against personal representative, where no compensation order had been filed with Mayor, no payment had been made into Mayor's special fund, and Mayor had not made determination that no one was entitled to death benefits. Jefferson v. E. D. Etnyre & Co., 300 F.Supp.2d 109, 2004 U.S. Dist. LEXIS 1304 (2004).

Under District of Columbia Workers' Compensation Act, employer's right of subrogation does not extend to uninsured motorist proceeds. D.C. Code 1981,§ 36-335. Holmes v. Washington Metro. Area Transit Authority, 731 F. Supp. 1115, 1990 U.S. Dist. LEXIS 889 (1990).

Bus driver who brought negligence suit against driver of vehicle which struck bus was not required to reimburse his employer from any recovery for payments employer made to driver under workers' compensation for medical bills and lost wages, considering that driver could recover only for noneconomic loss under the District of Columbia No-Fault Motor Vehicle Insurance Act, and statute limited employee's rights to driver's rights. D.C. Code 1981, §§ 35-2105, 36-335. McCrae v. Marques, 688 F. Supp. 653, 1988 U.S. Dist. LEXIS 9490 (1987).

Hearing examiner's failure to address workers' compensation claim for temporary total disability due to claimant's alleged shoulder injury from an airport shuttle bus accident was harmless error, where there was substantial evidence in record that claimant's injuries had resolved after date she last received workers' compensation benefits for her injuries. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Trial court did not abuse its discretion in granting injured employee's motion to voluntarily dismiss third-party claim against third party tort-feasor and in refusing to order compelled assignment of employee's claim to employer which had intervened to protect its workers' compensation lien; employer failed to establish that it suffered legal prejudice as a result of dismissal, considering that employer never took any steps to initiate its own cause of action against tort-feasor, and that it failed to pursue statutory assignment. D.C. Code § 36-335(b); Civil Rule 41(a)(2). Washington Metro. Area Transit Auth. v. Reid, 666 A.2d 41, 1995 D.C. App. LEXIS 196 (1995).

Workers' compensation carrier which had paid benefits to covered employee for workplace eye injury was entitled to equitable lien against employee's malpractice settlement with treating hospital, even though there was no statutory basis for such lien because employee had filed action against hospital within six months of receiving benefits from carrier. D.C. Code 1981, § 36-335(b, h). Williams v. Lumbermen's Mut. Cas. Co., 664 A.2d 342, 1995 D.C. App. LEXIS 167 (1995).

Employer and workers' compensation insurer were entitled to credit for $30,000 gratuitous payment made by government of Brazil to employee who was injured when he was shot by son of Brazilian ambassador; gratuitous payment was intended to compensate employee to some extent for his injuries, and employee would have been unjustly enriched if employer and insurer were not given credit. D.C. Code 1981, § 36-335(g). 4934, Inc. v. District of Columbia Dep't of Employment Services, 605 A.2d 50, 1992 D.C. App. LEXIS 83 (1992).

Review.

Even if hearing examiner's refusal to subpoena injured employee's attorney and force disclosure of settlement agreement between employee and government of Brazil was error in workers' compensation proceeding, error was harmless, since employee had no valid claim against government of Brazil. D.C. Code 1981, §§ 36-321(1), 36-335(g). 4934, Inc. v. District of Columbia Dep't of Employment Services, 605 A.2d 50, 1992 D.C. App. LEXIS 83 (1992).

Time to commence action.

Under District of Columbia law, once employee accepted workers' compensation award from his employer for injuries sustained in slip and fall, he had six months to file negligence suit against third parties who owned building or who provided cleaning services to building, after which such acceptance operated as assignment to employer of all rights against third parties, though three-year statute of limitations would ordinarily apply to employee's negligence claim. D.C. Code 1981, § 36-335. Smith v. Ogden Allied Servs., 842 F. Supp. 571, 1994 U.S. Dist. LEXIS 1184 (1994).

Workers' compensation claimant's cause of action for negligence against alleged third-party tortfeasor accrued, and six-month statute of limitations began to run, when claimant accepted compensation pursuant to lump-sum settlement award, not when claimant received full amount of settlement. Biratu v. BT Vt. Ave., LLC, 962 A.2d 261, 2008 D.C. App. LEXIS 482 (2008).

Lump-sum settlement of claim of workers' compensation claimant was an "award in a compensation order" triggering six-month statute of limitations within which claimant was required to file action against alleged third party tortfeasor; settlement agreement expressly listed claimant's medical bills from accident and noted total amount for lost wages, parties incorporated those sums in the negotiation for settlement, thereafter, and office of workers' compensation approved settlement in a compensation order approval of lump-sum settlement, which, pursuant to statute, was the complete and final disposition of case and a final binding compensation order. Biratu v. BT Vt. Ave., LLC, 962 A.2d 261, 2008 D.C. App. LEXIS 482 (2008).

Three-year statute of limitations applicable to worker's personal injury action was not tolled by pending workmen's compensation claims in District of Columbia and Maryland; statute providing that worker need not elect whether to receive workmen's compensation or

to recover damages against third person and that worker was required to commence action against third person within six months after receiving workman's compensation award did not provide for tolling of statute of limitations for bringing personal injury action. D.C. Code 1981,§§ 12-301, 36-335(a). Simpson v. Jack Baker, Inc., 620 A.2d 254, 1993 D.C. App. LEXIS 28 (1993).

Six-month period after acceptance of workers' compensation in which worker must file suit against third party or effectively lose right to do so begins to run when there is an award covering any part of claimed disability, rather than when worker accepts a final and comprehensive award for all disabilities compensable under the District of Columbia Workers' Compensation Act. D.C. Code 1981, §§ 36-301 et seq., 36-335(b). Cunningham v. George Hyman Constr. Co., 603 A.2d 446, 1992 D.C. App. LEXIS 50 (1992).

Six-month period after acceptance of workers' compensation in which injured worker had to file suit against third person or lose right to do so began to run when Department of Employment Services (DOES) issued order covering workers' temporary total disability, and not subsequently when DOES issued order approving lump-sum insurance settlement for permanent partial disability. D.C. Code 1981, § 36-335(b). Cunningham v. George Hyman Constr. Co., 603 A.2d 446, 1992 D.C. App. LEXIS 50 (1992).

Workers' Compensation Act six-month statute of limitations applied to claimant's third-party suits. D.C. Code 1981, § 36-335(b). Triplett v. George Hyman Constr. Co., 565 A.2d 83, 1989 D.C. App. LEXIS 217 (1989).

Workers' Compensation Act six-month statute of limitations applicable to claimant's third-party actions began to run when claimant received retroactive payments from his employer shortly after final compensation order was issued; it was not necessary that claimant receive every dollar due under final compensation order before statute of limitations began to run. D.C. Code 1981, § 36-335(b). Triplett v. George Hyman Constr. Co., 565 A.2d 83, 1989 D.C. App. LEXIS 217 (1989).

§ 32-1536. Notice of compensation secured.

Every employer who has secured compensation under the provisions of this chapter shall keep posted in a conspicuous place or places in and about his place or places of business typewritten or printed notices, in accordance with a form prescribed by the Mayor, stating that such employer has secured the payment of compensation in accordance with the provisions of this chapter. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of compensation and the date of the expiration of the policy.

(July 1, 1980, D.C. Law 3-77, § 37, 27 DCR 2503.)

Prior Codifications. — 1981 Ed., § 36-336.
Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

§ 32-1537. Discharge of liability.

In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer, and in order that the administration of this chapter in respect of such liability may be facilitated, the Mayor shall by regulation provide for the discharge, by the carrier for such employer, of such obligations and duties of the employer, in respect to such liability, imposed by this chapter upon the employer, as he considers proper in order to effectuate the provisions of this chapter. For such purposes:

(1) Notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier; and

(2) Any requirement by the Mayor or any court under any compensation

order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

(July 1, 1980, D.C. Law 3-77, § 38, 27 DCR 2503.)

Section references. — This section is referred to in § 32-1538.

Prior Codifications. — 1981 Ed., § 36-337.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

§ 32-1538. Insurance policies.

(a) Every policy or contract of insurance issued under authority of this chapter shall contain:

(1) A provision to carry out the provisions of § 32-1537; and

(2) A provision that insolvency or bankruptcy of the employer and discharge therein or both shall not relieve the carrier from payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

(b) No contract or policy of insurance issued by a carrier under this chapter shall be cancelled prior to the date specified in such contract or policy for its expiration until at least 30 days have elapsed after a notice of cancellation has been sent to the Mayor and to the employer in accordance with the provisions of § 32-1513(c).

(c)(1) Employers implementing a safe workplace program shall qualify for certification for a 5% premium discount under the employer's workers' compensation insurance policy.

(2) For each policy of workers' compensation insurance issued or renewed in the District on and after April 16, 1999, there shall be granted, by the insurer, a 5% premium reduction pursuant to rules issued by the Department of Insurance, Securities, and Banking, in the premium for the policy if the insured has been certified by the Department of Employment Services, as having a safe workplace program that complies with the requirements of this chapter and has notified its insurer in writing of the certification. Certification of an insured shall be required for each of the 4 years in which the premium discount is granted. Thereafter, any premium discount authorized pursuant to this chapter shall be determined from the experience rating plan of the insured, or in the case of an insured not rated upon experience.

(3) The workers' compensation insurance policy of an insured shall be subject to an additional premium for the purposes of reimbursement of a previously granted premium discount and to cancellation in accordance with the policy if it is determined by the Department of Employment Services that the insured misrepresented the compliance of its safe workplace program.

(4) The Commissioner of the Department of Banking and Financial Institutions may promulgate rules and regulations necessary for the implementation and enforcement of this section.

(July 1, 1980, D.C. Law 3-77, § 39, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(i), 46 DCR 891; June 11, 2004, D.C. Law 15-166, § 4(jj)(1), 51 DCR 2817; Apr. 13, 2005, D.C. Law 15-354, § 50, 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 36-338.

Effect of amendments. — D.C. Law 15-166, in par. (2) of subsec. (c), substituted "Department of Insurance, Securities, and Banking" for "Department of Insurance and Securities Regulation".

D.C. Law 15-354, in subsec. (c)(4), substituted "Commissioner of the Department of Banking and Financial Institutions" for "Commissioner of Insurance and Securities".

Emergency legislation. — For temporary (90 day) amendment of section, see § 4(jj)(1) of Consolidation of Financial Services Emergency Amendment Act of 2004 (D.C. Act 15-381, February 27, 2004, 51 DCR 2653).

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 12-229. — For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 15-166. — For Law 15-166, see notes following § 31-1004.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 32-402.

§ 32-1539. Failure to secure payment of compensation.

(a) Any employer required to secure the payment of compensation under this chapter who fails to secure such compensation shall be assessed a civil fine of not less than $1,000 and not more than $10,000; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such fine as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary, and treasurer shall be severally and personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under the chapter in respect to any injury which may occur to any employee or such corporation while it shall so fail to secure the payment of compensation as required by § 32-1534.

(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after 1 of his employees has been injured within the purview of this chapter, and with intent to avoid the payment of compensation under this chapter to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $1,000 and not more than $10,000, or by imprisonment for not more than 1 year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(c) This section shall not affect any other liability of the employer under this chapter.

(July 1, 1980, D.C. Law 3-77, § 40, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(g), 37 DCR 6890.)

Prior Codifications. — 1981 Ed., § 36-339.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 8-198. — For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 32-1542.01.

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 32-1501.

§ 32-1540. Special fund.

(a) There is established in the Treasury of the District of Columbia a special fund for the purpose of making payments in accordance with the provisions of §§ 32-1507(c), 32-1507(e), 32-1508(6), and 32-1519(b). Such fund shall be administered by the Mayor.

(b) The Mayor shall be the custodian of the special fund, and all moneys and securities in such fund shall be held in trust by the Mayor and shall not be used for purposes other than those provided by this chapter. The Mayor may invest any portion of the fund which, in the opinion of the Mayor, is not needed for current requirements in bonds or notes of the United States or any federal land bank; provided, that such investments are made pursuant to the Financial Institutions Deposit and Investment Act of 1997.

(c) Neither the District of Columbia nor the Mayor shall be liable in respect of payments authorized under §§ 32-1507(c), 32-1507(e), 32-1508(6) and 32-1519(b) in any amount greater than the money or property deposited in or belonging to such fund.

(d) Payments into such fund shall be made as follows:

(1) Each employer shall pay $5,000 as compensation for the death of an employee of such employer resulting from injury where the Mayor determines that there is no person entitled under this chapter to compensation for such death;

(2) All amounts collected as fines and penalties under the provisions of this chapter shall be paid into such fund; and

(3) The total assessment amount shall be allocated between self-insured employers and insured employers based on paid losses for the fiscal year preceding the year in which the assessment is based. The method of assessing self-insured employers shall be based upon paid losses. The method of assessing insured employers shall be a surcharge based on premium as set forth in this subsection. The portion of the total aggregate assessment to be collected from self-insured employers shall be equal to that proportion of the total paid losses during the preceding fiscal year, which the total paid losses of all self-insured employers bore to the total paid losses made by all self-insured employers and insurers on behalf of all insured employers during the preceding fiscal year. The portion of the total aggregate assessment that shall be collected from insured employers shall be equal to that proportion of total paid losses during the preceding fiscal year, which the total paid losses made on behalf of all insured employers bore to the total paid losses made by all self-insured employers and insurers on behalf of all insured employers during the preceding fiscal year.

(4) Any employer which becomes self-insured shall be assessed as if it were insured for 24 months after conversion. The new self-insured employer shall be assessed on the basis of premium. The premium basis shall be equal to its premium for the policy period immediately preceding conversion to be self-insured, multiplied by the percentage change in the self-insured's payroll. The payroll measurement period shall be the fiscal year immediately preceding conversion and the subsequent 2 fiscal years.

(5) On or after September 1, 1999, and annually thereafter, the Mayor shall notify insurers of the premium surcharge rate to be effective for policies written or renewed on and after October 1, 1999, and annually thereafter. The Mayor shall notify self-insured employers, at the same time, of the amount to be assessed against self-insured employers for the following fiscal year. The assessment against self-insurers and the surcharge rate applicable to policies of insured employers, together with amounts generated by paragraphs (1) and (2) of this subsection, shall be sufficient to generate revenue needed to satisfy obligations to the Special Fund. Should the Mayor subsequently determine that the assessments are insufficient to meet the Special Fund's obligations during a fiscal year, the Mayor may assess self-insurers and insured employers to cover any anticipated deficiency, based upon the allocation method set forth in this subsection. Self-insured employers and insurers, on behalf of their policyholders, shall remit any emergency assessment within 30 calendar days of receipt of notice from the Mayor.

(6) Every workers' compensation insurer shall collect, from each of its policyholders, an amount equal to the insured employers' assessment through a surcharge based on premium. These assessments shall include any amounts paid by insurers on behalf of their policyholders to cover an emergency assessment by the Mayor during the previous fiscal year. Assessments when collected shall not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, shall be treated as separate costs imposed upon insured employers. The total of the assessment imposed by this subsection shall be stated as a separate cost on an insured employer's policy, or on a separate document submitted to the insured employer, and shall be identified as the "Workers' Compensation Policyholder Surcharge." Each assessment shall be shown as a percentage of the total workers' compensation policyholder premium. The premium surcharge shall be excluded from the definition of premiums for all purposes, including computation of agents' commissions or premium taxes.

(7) Insurers and self-insurers shall forward to the Special Fund all amounts collected pursuant to this section. These collections shall be for the administration of the Special Fund and shall not be part of the General Fund of the District of Columbia. Any balance remaining at the end of any fiscal year shall not revert to the General Fund and shall be used exclusively to offset any Special Fund assessment required in the next immediate fiscal year.

(e) The special fund shall be audited annually by the Department of Employment Services. The Director of the Department of Employment Services shall file an audited financial report with the Council by March 1st detailing the financial status of the fund as of the end of the preceding fiscal year, including the fund's operation, cash flow, and changes in capital and surplus, using standard accounting principles.

(f) All civil penalties provided for in this chapter shall be collected by civil suit brought by the Mayor.

(July 1, 1980, D.C. Law 3-77, § 41, 27 DCR 2503; Mar. 18, 1998, D.C. Law 12-56, § 3, 44 DCR 6933; Apr. 16, 1999, D.C. Law 12-229, § 2(j), 46 DCR 891; Dec. 7, 2004, D.C. Law 15-205, § 1102(c), 51 DCR 8441.)

Section references. — This section is referred to in §§ 32-1519, 32-1535, 32-1541, and 32-1542.

Prior Codifications. — 1981 Ed., § 36-340.

Effect of amendments. — D.C. Law 15-205 rewrote subsec. (e) to read as follows: "(e) The accounts of the special fund shall be audited in the same manner as similar accounts of the District of Columbia."

Emergency legislation. — For temporary amendment of section, see § 3 of the Financial Institutions Deposit and Investment Emergency Amendment Act of 1997 (D.C. Act 12-175, October 30, 1997, 44 DCR 6918).

For temporary amendment of section, see § 3 of the Financial Institutions Deposit and Investment Congressional Recess Emergency Amendment Act of 1998 (D.C. Act 12-281, February 25, 1998, 45 DCR 1707).

For temporary (90 day) amendment of section, see § 1102(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) worker's compensation third-party administrator study provisions, see § 1112 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1102(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) worker's compensation third-party administrator study provisions, see § 1112 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 12-56. — Law 12-56, the "Financial Institutions Deposit and Investment Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-264, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on September 22, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 17, 1997, it was assigned Act No. 12-177 and transmitted to both Houses of Congress for its review. D.C. Law 12-56 became effective on March 18, 1998.

Legislative history of Law 12-229. — For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 32-1521.01.

Short title. — Short title of subtitle K of title I of Law 15-205: Section 1111 of D.C. Law 15-205 provided that subtitle K of title I of the act may be cited as the Workers' Compensation Third-Party Administrator Study Amendment Act of 2004.

References in text. — The "Financial Institutions Deposit and Investment Act of 1997," referred to in (b), is D.C. Law 12-56.

Editor's notes. — Section 1112 of D.C. Law 15-205 provided: "By January 1, 2005, the Mayor shall provide the Council with an analysis of anticipated financial costs and savings if a third-party administrator would administer the special fund established by section 41 of the District of Columbia Workers' Compensation Act of 1979, effective July 1, 1980 (D.C. Law 3-77; D.C. Official Code § 32-1540)."

CASE NOTES

In general.

The purpose of the special fund for second or successive injuries of workers' compensation claimants is to prevent and reduce employment discrimination based on the risk of disability-related liability and to eliminate a specific financial incentive not to hire or retain previously injured workers. Mergentime Perini v. D.C. Dep't of Empl. Servs., 810 A.2d 901, 2002 D.C. App. LEXIS 670 (2002).

§ 32-1541. Administration fund.

(a)(1) There is established in the Treasury of the District of Columbia a fund to provide for the payment of all expenses to administer the provisions of this chapter. The fund shall be administered by the Mayor.

(2) The Mayor shall determine, for fiscal years commencing on or after October 1, 1999, the cost of administration of this chapter for each fiscal year and shall prorate and assess the costs of administration as provided in subsections (d) and (f) of this section. The cost of administration shall include any expenses that have been incurred, will be incurred, or that will accrue during the fiscal year.

(3) The Mayor shall determine, in each fiscal year commencing on or after September 30 of the fiscal year in which the Workers' Compensation Amendment Act of 1998 becomes effective, prior to the commencement of the fiscal year, the cost of administration of this chapter. The cost of administration shall include any expenses to be incurred or that will accrue during the fiscal year.

(b) The provisions of § 32-1540(b) and (e) shall apply to the fund established pursuant to subsection (a)(1) of this section.

(c) The Mayor shall determine, at the end of each fiscal year, the cost of the administration of this chapter. The cost of administration shall include any expenses to be incurred or which will accrue during the fiscal year.

(d) The total amount of costs to administer this chapter, shall be pro rated among the carriers and self-insurers authorized to insure pursuant to § 32-1534. The assessment base shall be the total amount of compensation and medical payments that carriers and self-insurers have paid pursuant to this chapter during the preceding fiscal year; provided, however, beginning with the fiscal year commencing on or after October 1, 1999, the Mayor shall have the authority to assess each carrier or self-insured a minimum annual amount of $1,000.

(e) The assessment for each carrier and self-insurer for the preceding fiscal year shall be redetermined, subsequent to each fiscal year, based upon the actual total amount of compensation and medical payments paid and the administrative costs incurred that year. Adjustments for differences between the beginning year assessment and the year end actual determination, if any, shall be made to the next ensuing assessment.

(e-1) If the Mayor fails to properly determine or redetermine the costs of administering this chapter or fails to properly determine or redetermine the assessment rate or assessments under this section, the assessment rates and assessments shall remain valid and no cause of action shall lie for the Mayor's failure.

(f) The Mayor shall assess each carrier and self-insurer for its pro rata share of the total amount of costs to administer this chapter in the fiscal year pursuant to this section, and shall give written notice by certified or registered mail to each carrier or self-insurer of the assessment against it.

(g)(1) Assessments shall be paid within the time prescribed by the Mayor.

(2) For a period not to exceed 12 months following April 16, 1999, the Mayor may permit payment of the assessment of each carrier or self-insured in quarterly installment payments.

(h) If a deficit is projected to occur in the administration of the fund created pursuant to subsection (a) of this section, prior to the end of the fiscal year, the Mayor is authorized to implement an emergency assessment in an amount deemed necessary to avoid the deficit. Self-insurers and carriers, on behalf of their policyholders, shall remit the emergency assessment within 30 calendar days of receipt of the assessment.

(i) The Mayor is authorized to promulgate rules deemed necessary or appropriate to carry out the purposes of this section, including provisions for making and preserving appropriate records, paying of assessments, inspecting these records, and the submission by carriers and self-insurers of reports prescribed by the Mayor.

(j) If a carrier or self-insurer fails to pay the assessment referred to in subsection (f) or (h) of this section, or to make and preserve records in the form and manner required by the Mayor, to file a report in the form and manner required by the Mayor, or to allow the Mayor to inspect records required by rules issued pursuant to this section, the Mayor may suspend or revoke the authorization of a carrier to insure for workers' compensation or a self-insurer to act as a self-insurer pursuant to this chapter.

(k) The administration fund shall be audited annually by the Department of Employment Services. The Director of the Department of Employment Services shall file an audited financial report with the Council by March 1st detailing the financial status of the fund as of the end of the preceding fiscal year, including the fund's operation, cash flow, and changes in capital and surplus, using standard accounting principles.

(July 1, 1980, D.C. Law 3-77, § 42, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(k), 46 DCR 891; Dec. 7, 2004, D.C. Law 15-205, § 1102(d), 51 DCR 8441; Sept. 24, 2010, D.C. Law 18-223, § 2193, 57 DCR 6242.)

Section references. — This section is referred to in § 32-1502.

Prior Codifications. — 1981 Ed., § 36-341.

Effect of amendments. — D.C. Law 15-205 added subsec. (k).

D.C. Law 18-223 added subsec. (e-1).

Emergency legislation. — For temporary (90 day) amendment of section, see § 1102(d) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1102(d) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 2193 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 12-229. — For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 32-1521.01.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 32-241.

References in text. — The effective date of the Workers' Compensation Amendment Act of 1998, referred to in (a)(3), is April 16, 1999.

Editor's notes. — Section 2193(b) of D.C. Law 18-223 provided: "(b) This section shall apply as of July 1, 1980."

§ 32-1542. Retaliatory actions by employer prohibited.

It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim compensation from such employer, or because he has testified or is about to testify in a proceeding under this chapter. Any employer who violates this section shall be liable to a penalty of not less than $100 or more than $1,000, as may be determined by the Mayor. All such penalties shall be paid to the Mayor for deposit in the special fund as described in § 32-1540, and if not paid may be recovered in a civil action brought in the Superior Court of the District of Columbia. Any employee so discriminated against shall be restored to his employment and shall be compensated by his employer for any loss of wages arising out of such discrimination; provided, that if such employee ceases to be qualified to perform the duties of his employment, he shall not be entitled to

such restoration and compensation. The employer alone and not his carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from liability for such penalties and payments shall be void.

(July 1, 1980, D.C. Law 3-77, § 43, 27 DCR 2503.)

Prior Codifications. — 1981 Ed., § 36-342.
Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

CASE NOTES

ANALYSIS

Animus.
Burden of proof.
Damages.
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Retaliatory actions.

Animus.

Required animus to prove retaliatory discharge for filing workers' compensation claim entails some additional showing beyond the firing, such as evidence of a pattern and practice of discriminating against employees filing compensation claims; there must be proof that employer's motivation for the firing was, at least in part, the employee's pursuit of his statutory rights. D.C. Code 1981, § 36-342. 5000 Wis. Inc. v. District of Columbia Dep't of Employment Serv., 728 A.2d 1192, 1999 D.C. App. LEXIS 79 (1999).

Employer's motivation for terminating employee must be employee's pursuit of rights under workers' compensation statute, in order for employee to establish prima facie case of retaliatory discharge for claiming workers' compensation. D.C. Code 1981, § 36-342. Clair v. District of Columbia Dep't of Employment Servs., 658 A.2d 1040, 1995 D.C. App. LEXIS 106 (1995).

Fact that employer fires a workers' compensation claimant who refuses to return to work due to a claimed work-related injury does not, by itself, supply the animus requirement for a wrongful discharge claim. D.C. Code 1981, § 36-342. Lyles v. District of Columbia Dep't of Employment Services, 572 A.2d 81, 1990 D.C. App. LEXIS 60 (1990).

Burden of proof.

Once the employee has made a prima facie showing of retaliatory discharge for filing a workers' compensation claim, the burden of production shifts to the employer to articulate a legitimate, non-retaliatory reason for the discharge; the employer, however, need not persuade the court that it was actually motivated by the proffered reasons. D.C. Code 1981, § 36-342. Children's Defense Fund v. District of Columbia Dep't of Empl. Servs., 726 A.2d 1242, 1999 D.C. App. LEXIS 84 (1999).

In a claim of retaliatory discharge for filing of workers' compensation claim, once the employer has met its burden of production, the employee must show not that the employer's stated reason is incredible, but that the employer unlawfully discharged the employee. D.C. Code 1981, § 36-342. Children's Defense Fund v. District of Columbia Dep't of Empl. Servs., 726 A.2d 1242, 1999 D.C. App. LEXIS 84 (1999).

Once employee has made prima facie showing of retaliatory discharge, burden of production shifts to employer to present evidence of legitimate business reason for discharge. D.C. Code 1981, § 36-342. Abramson Assoc., Inc. v. District of Columbia Dep't of Employment Services, 596 A.2d 549, 1991 D.C. App. LEXIS 233 (1991).

Memoranda from employer that supervisor of word processing staff had inability to manage, failed to complete assignments given to her, and had increasingly bad attitude were evidence of legitimate, nonretaliatory reasons for firing supervisor and, thus, employer met its burden of proceeding in retaliatory discharge action. D.C. Code 1981, § 36-342. Abramson Assoc., Inc. v. District of Columbia Dep't of Employment Services, 596 A.2d 549, 1991 D.C. App. LEXIS 233 (1991).

Damages.

Genuine issues of material fact, as to whether employer acted maliciously, willfully and oppressively or in complete disregard for employee's rights in terminating him from his employment as dialysis machine repair technician, precluded summary judgment for employer on employee's claim for punitive damages for wrongful termination in violation of public policy; employee alleged that decision makers were aware of employee's protected activity, in objecting and refusing to participate in falsification of maintenance records, before they made their decision to terminate him.

Owens v. Nat'l Med. Care, Inc., 337 F.Supp.2d 131, 2004 U.S. Dist. LEXIS 19340 (2004).

Under District of Columbia law as predicted by federal district court, punitive damages may be awarded for the intentional tort of wrongful discharge based on public policy. Owens v. Nat'l Med. Care, Inc., 337 F.Supp.2d 131, 2004 U.S. Dist. LEXIS 19340 (2004).

Employees at will.

To state claim under public policy exception to general rule under District of Columbia law allowing employer to discharge at-will employee at any time, employee must show that he (1) engaged in protected activity, i.e., refused to violate law, (2) employer took adverse personnel action against him, and (3) there was causal connection between two. Owens v. Nat'l Med. Care, Inc., 337 F.Supp.2d 131, 2004 U.S. Dist. LEXIS 19340 (2004).

As with other workers, at-will employees may not be discharged if grounds for firing are specifically proscribed by some statute. D.C. Code 1981, §§ 1-2512, 11-1913, 36-342. Washington v. Guest Servs., 703 A.2d 646, 1997 D.C. App. LEXIS 281 (1997), remanded by 718 A.2d 1071, 1998 D.C. App. LEXIS 182, 14 I.E.R. Cas. (BNA) 643 (D.C. 1998).

Employee who claimed she had been discharged in retaliation for making workers' compensation claim could not forego administrative remedy and instead obtain recovery against employer on tort theory of wrongful discharge under "public policy" exception to employer-at-will doctrine. D.C. Code 1981, § 36-342. Nolting v. National Capital Group, Inc., 621 A.2d 1387, 1993 D.C. App. LEXIS 61 (1993).

Evidence.

Statements in deposition testimony by employee, who was terminated from his position as dialysis machine repair technician, that he believed he was "scapegoat" and "fall guy" for mistake did not foreclose finding that employee's alleged objection and refusal to participate in falsification of maintenance records was sole reason for his termination, as would support claim of wrongful discharge in violation of public policy under District of Columbia law; despite employer's contention that employee's statement indicated he believed he was fired for someone else's mistake regarding machine that injured patients, and not because he engaged in protected activity, deposition testimony was far from clear and any discrepancies in testimony, perceived or actual, necessitated credibility determination for jury to make. Owens v. Nat'l Med. Care, Inc., 337 F.Supp.2d 131, 2004 U.S. Dist. LEXIS 19340 (2004).

Causal connection between employee's protected activity and his termination, as required to support claim of wrongful discharge in violation of public policy under District of Columbia law, cannot exist solely based on temporal proximity of employee's protected activity to his termination and general "company" knowledge of his protected activity. Owens v. Nat'l Med. Care, Inc., 337 F.Supp.2d 131, 2004 U.S. Dist. LEXIS 19340 (2004).

Workers' compensation claimant failed to cite any record support for her contention that she presented evidence, which was ignored, in support of her retaliatory discharge claim, and thus, such evidence would not be considered on appeal; claimant alleged there was evidence that her former employer's general counsel believed that she was making fraudulent insurance claims for long term disability benefits, that the employer's claims department manipulated a neurologist's report contrary to company policy, and that her employer's failure to remove her from some but not all of her assigned cases recognized her disability while setting her up for failure. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Manager's statement that employee would not be scheduled for work until "the thing [was] settled" was ambiguous and, thus, was insufficient, by itself, to show retaliation for purposes of statute prohibiting employer from retaliating against employee for filing workers' compensation claim. D.C. Code 1981, § 36-342. 5000 Wis. Inc. v. District of Columbia Dep't of Employment Serv., 728 A.2d 1192, 1999 D.C. App. LEXIS 79 (1999).

Evidence was insufficient to support finding that employer's failure to place employee back on the work schedule was motivated wholly or in part by the requisite animus required for workers' compensation retaliatory discharge claim; the required animus to prove retaliatory discharge entailed some additional showing beyond the firing, and employee did not make the required additional showing beyond the employer's refusal to return her to work. D.C. Code 1981, § 36-342. 5000 Wis. Inc. v. District of Columbia Dep't of Employment Serv., 728 A.2d 1192, 1999 D.C. App. LEXIS 79 (1999).

Ordinarily the prima facie case of retaliatory discharge based on a workers' compensation claim must, in the nature of things, be shown by circumstantial evidence. D.C. Code 1981, § 36-342. Children's Defense Fund v. District of Columbia Dep't of Empl. Servs., 726 A.2d 1242, 1999 D.C. App. LEXIS 84 (1999).

Evidence did not support conclusion that employee was discharged in retaliation for filing workers' compensation claim; evidence showed that employee's department was reorganized, that reorganization was discussed several months before employee's discharge, that two other employees were also discharged, that employee was not qualified for new position, and that employee was invited to apply for new position but chose not to do so. D.C. Code 1981,

§ 36-342. Children's Defense Fund v. District of Columbia Dep't of Empl. Servs., 726 A.2d 1242, 1999 D.C. App. LEXIS 84 (1999).

In retaliatory discharge claim, employee must ordinarily rely on circumstantial evidence to prove retaliatory animus. D.C. Code 1981, § 36-342. Abramson Assoc., Inc. v. District of Columbia Dep't of Employment Services, 596 A.2d 549, 1991 D.C. App. LEXIS 233 (1991).

In general.

Anti-retaliation provisions of District of Columbia Workers' Compensation Act did not apply to employee of District of Columbia Office of Unified Communications (OUC). Jones v. Quintana, 658 F.Supp.2d 183, 2009 U.S. Dist. LEXIS 90238 (2009).

District of Columbia statute prohibiting retaliation against employees for filing workers' compensation claim does not apply to employees of federal or District of Columbia governments. Heasley v. D.C. Gen. Hosp., 180 F.Supp.2d 158, 2002 U.S. Dist. LEXIS 52 (2002).

Employee attempted to make claim for workers' compensation, for purposes of retaliatory discharge claim, even though employee had not given written notification of work-related stress prior to termination, where employee orally informed her supervisor that she suffered from work-related stress, requested time off to recuperate, and produced letter from treating psychiatrist that stated that he was treating employee for depression. D.C. Code 1981, §§ 36-313(d)(1), 36-342. Abramson Assoc., Inc. v. District of Columbia Dep't of Employment Services, 596 A.2d 549, 1991 D.C. App. LEXIS 233 (1991).

Workers' refusal to obey employer's instruction to return to work because she asserted that she was unable to return to work because of disability resulting from injury on the job was an attempt to claim compensation for purposes of wrongful discharge statute. D.C. Code 1981, § 36-342. Lyles v. District of Columbia Dep't of Employment Services, 572 A.2d 81, 1990 D.C. App. LEXIS 60 (1990).

Prima facie case.

Workers' compensation claimant failed to establish a prima facie case of retaliatory discharge based on former employer's animus towards her for filing claim for workers' compensation benefits because the employer would not let claimant use sick leave during period she collected temporary total disability, and subsequently required her to return to work, where employer's return to work order was made pursuant to a bona fide physician's evaluation that cleared claimant for full, unrestricted duty. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

To establish a prima facie case of retaliatory discharge for filing workers' compensation claim, employee must prove that he made or attempted to make a claim for workers' compensation and that the employer discharged him in retaliation for that action. D.C. Code 1981, § 36-342. 5000 Wis. Inc. v. District of Columbia Dep't of Employment Serv., 728 A.2d 1192, 1999 D.C. App. LEXIS 79 (1999).

To establish a prima facie case of retaliatory discharge for filing a workers' compensation claim, it is not enough for the employee merely to point to the fact that she has been discharged; to prove the necessary retaliatory animus, the employee must make some additional showing beyond the discharge, even when the discharge itself may have been unreasonable. D.C. Code 1981, § 36-342. Children's Defense Fund v. District of Columbia Dep't of Empl. Servs., 726 A.2d 1242, 1999 D.C. App. LEXIS 84 (1999).

Fact that employer discharged employee without allowing her the opportunity to return to her usual work duties did not establish prima facie case of retaliatory discharge for filing of workers' compensation claim. D.C. Code 1981, § 36-342. Children's Defense Fund v. District of Columbia Dep't of Empl. Servs., 726 A.2d 1242, 1999 D.C. App. LEXIS 84 (1999).

To establish a prima facie case of retaliatory discharge based on workers' compensation claim, employee must prove, first, that she made a claim for workers' compensation, and second, that employer discharged her in retaliation for that action. D.C. Code 1981, § 36-342. Children's Defense Fund v. District of Columbia Dep't of Empl. Servs., 726 A.2d 1242, 1999 D.C. App. LEXIS 84 (1999).

To establish prima facie case for retaliatory discharge based on workers' compensation claim, employee must prove: (1) that claimant made or attempted to make claim for workers' compensation, and (2) that employer discharged him or her in retaliation for that action. D.C. Code 1981, § 36-342. Clair v. District of Columbia Dep't of Employment Servs., 658 A.2d 1040, 1995 D.C. App. LEXIS 106 (1995).

Employee who proves that she made or attempted to make claim for workers' compensation and that her employer discharged her in retaliation for making claim establishes prima facie case for retaliatory discharge. D.C. Code 1981, § 36-342. Abramson Assoc., Inc. v. District of Columbia Dep't of Employment Services, 596 A.2d 549, 1991 D.C. App. LEXIS 233 (1991).

Employee established prima facie case that employer discharged her in retaliation for attempting to claim workers' compensation where employee was fired one day after employee told her supervisor that treating psychiatrist had told her that her stress was work

related and requested leave to recuperate. D.C. Code 1981, § 36-342. Abramson Assoc., Inc. v. District of Columbia Dep't of Employment Services, 596 A.2d 549, 1991 D.C. App. LEXIS 233 (1991).

Remand.

Remand of retaliatory discharge claim to hearing examiner was required, even though substantial evidence supported conclusion of retaliatory discharge, where it was unclear which party was given burden to persuade that discharge was in retaliation for pursuit of employee's rights under Workers' Compensation Act and it was not clear that hearing examiner would necessarily have reached same conclusion if she imposed burden of persuasion on employee. D.C. Code 1981, § 36-342. Abramson Assoc., Inc. v. District of Columbia Dep't of Employment Services, 596 A.2d 549, 1991 D.C. App. LEXIS 233 (1991).

Retaliatory actions.

Genuine issues of material fact regarding whether individuals who decided to terminate employee were aware of his alleged protected activity of objecting and refusing to participate in falsification of maintenance records of dialysis machine for which he was repair technician, as would support finding that there was causal connection between employee's protected activity and his termination, precluded summary judgment for employer on employee's claim of wrongful discharge in violation of public policy under District of Columbia law; employee's termination occurred only days after he engaged in alleged protected activity, and employee set forth facts showing that director of nursing who may have participated in discussion that resulted in his termination knew of alleged protected activity. Owens v. Nat'l Med. Care, Inc., 337 F.Supp.2d 131, 2004 U.S. Dist. LEXIS 19340 (2004).

Fact that employee made several attempts to return to her employment, but was not placed on the schedule after said requests did not show retaliation for purposes of statute prohibiting employer from retaliating against employee for filing workers' compensation claim. D.C. Code 1981, § 36-342. 5000 Wis. Inc. v. District of Columbia Dep't of Employment Serv., 728 A.2d 1192, 1999 D.C. App. LEXIS 79 (1999).

Employer did not discharge employee in retaliation for making claim for workers' compensation; employee was able, as result of injury, to work only part-time in full-time position. D.C. Code 1981, § 36-342. Clair v. District of Columbia Dep't of Employment Servs., 658 A.2d 1040, 1995 D.C. App. LEXIS 106 (1995).

Employer which required employee to resign as a condition for receiving lump-sum settlement of workers' compensation claim did not commit a retaliatory discharge as a matter of law. D.C. Code 1981, § 36-342. Dominique v. District of Columbia Dep't of Employment Services, 574 A.2d 862, 1990 D.C. App. LEXIS 110 (1990).

Discharge of employee for leaving assembly line, in violation of supervisor's instructions, in order to take medication for injury he had previously sustained on job, did not constitute retaliatory discharge, in violation of workers' compensation statute; employee's attempt to take medication was not claim of compensation and there was no showing that discharge was motivated by employee's prior pursuit of compensation claim. D.C. Code 1981, § 36-342. Dyson v. District of Columbia Dep't of Employment Services, 566 A.2d 1065, 1989 D.C. App. LEXIS 273 (1989).

§ 32-1542.01. Establishment of Commission.

(a) There is established the Workers' Compensation Insurance Study Commission ("Commission").

(b) The Commission shall:

(1) Review the history of workers' compensation insurance rate structures in the District of Columbia since the enactment of this chapter;

(2) Review the procedure for setting new workers' compensation insurance rates;

(3) Study alternative structures and mechanisms for setting new workers' compensation insurance rates;

(4) Study the possibility of the District of Columbia selling workers' compensation insurance to private employers; and

(5) Report annually to the Mayor and the Council of the District of Columbia on the Commission's findings.

(c) To the extent feasible, the Mayor shall provide staff support to the Commission from the Department of Employment Services.

(d)(1) The Commission shall consist of:

(A) Two ex officio members who shall be the Directors of the Department of Consumer and Regulatory Affairs and the Department of Employment Services;

(B) Not more than 6 persons from the general public to serve as members who shall be appointed by the Mayor with the advice and consent of the Council within 45 days of enactment of the District of Columbia Workers' Compensation Equity Amendment Act of 1990; and

(C) The Mayor shall appoint, with the advice and consent of the Council, 1 person from the general public to serve as chairperson of the Commission within 45 days of the enactment of the District of Columbia Workers' Compensation Equity Amendment Act of 1990.

(2) Each member of the Commission shall serve a 3-year term.

(3) The Commission shall appoint other officers and establish rules and procedures as the Commission shall determine.

(4) Any vacancy on the Commission shall be filled in the same manner as the original appointment.

(e) The members of the Commission from the general public shall include representatives from labor, business, the medical community, the insurance industry, and consumer advocates. All members of the Commission shall serve without compensation, but may be reimbursed for reasonable actual expenses incurred in the performance of official duties, pursuant to rules issued by the Mayor in accordance with § 1-611.08.

(f) The Commission shall continue in existence for 3 years at which time the Commission shall terminate unless the Council determines that the Commission shall continue in existence or be reestablished.

(July 1, 1980, D.C. Law 3-77, § 43a, as added Mar. 6, 1991, D.C. Law 8-198, § 2(h), 37 DCR 6890.)

Prior Codifications. — 1981 Ed., § 36-342.1.

Legislative history of Law 8-198. — Law 8-198, the "District of Columbia Workers' Compensation Equity Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-74, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on September 25, 1990, and October 9, 1990, respectively. Signed by the Mayor on October 24, 1990, it was assigned Act No. 8-261 and transmitted to both Houses of Congress for its review.

References in text. — The "District of Columbia Workers' Compensation Equity Amendment Act of 1990" referred to in (d)(1)(B) and (d)(1)(C), is D.C. Law

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 32-1501.

§ 32-1542.02. Commissioner of Insurance and Securities; rate filings.

(a) The Commissioner of Insurance and Securities [Commissioner of the Department of Insurance, Securities, and Banking] ("Commissioner") shall take into consideration the profits of the insurers when evaluating the rate filing for workers' compensation insurance.

(b) Each rating organization shall file, within 60 days after April 16, 1999,

a loss cost filing for new and renewal policies for workers' compensation insurance to be effective on and after April 16, 1999.

(c) The filing shall reflect no less than an 11.3% reduction in benefits. The filing shall be subject to approval or disapproval by the Commissioner, but an approval or disapproval shall be made not later than 60 calendar days after first receipt of the loss cost filing.

(d) Within 30 days of the Commissioner's final decision regarding a filing by a rating organization made pursuant to this section, each insurer writing workers' compensation insurance in the District shall file revised rates for the voluntary market in accordance with this decision. These revised rates shall be applicable to all new and renewal workers' compensation insurance policies effective on or after April 16, 1999. For any policy in effect on April 16, 1999, through the end of the policy period the premium shall be reduced by a percentage which equals the benefit level reduction. With respect to new and renewal policies effective on or after April 16, 1999, and before the final approval of the rates filed pursuant to this section, each workers' compensation insurance carrier shall, not later than 45 days after the rates approved pursuant to this section become final, adjust the premium of the new or renewal policy for the period after April 16, 1999, to reflect the difference between the premium on the policy as issued and the premium which reflects the rates as finally approved.

(July 1, 1980, D.C. Law 3-77, § 43b, as added Apr. 16, 1999, D.C. Law 12-229, § 2(m), 46 DCR 891.)

Prior Codifications. — 1981 Ed., § 36-342.2

Effect of amendments. — D.C. Law 12-229 added this section.

Legislative history of Law 12-229. — For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

§ 32-1542.03. Anti-fraud reporting requirement.

The Director of the Department of Employment Services shall file an annual anti-fraud report with the Council by March 1st, which shall contain detailed and comprehensive information about the Department's anti-fraud activities relating to Workers' Compensation insurance during the preceding calendar year.

(July 1, 1980, D.C. Law 3-77, § 43c, as added Dec. 7, 2004, D.C. Law 15-205, § 1102(e), 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 1102(e) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 1102(e) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 32-1521.01.

§ 32-1542.04. Compliance.

(a) The Director of Employment Services ("Director") shall assign from the workforce in the Workers' Compensation office a staff equal to 5 full time

equivalents to the enforcement of employer compliance with Workers' Compensation requirements, including enforcing existing law and referring cases to the Office of the Attorney General for prosecution.

(b) The Director shall file a semi-annual compliance report with the Council by March 31st and by September 30th, which shall contain detailed and comprehensive information about the compliance enforcement activities during the preceding 6 months.

(July 1, 1980, D.C. Law 3-77, § 43d, as added Dec. 7, 2004, D.C. Law 15-205, § 1102(e), 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 1102(f) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 1102(f) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 32-1521.01.

§ 32-1543. Appropriations.

(a) There is hereby authorized to be appropriated such sum as is necessary for the Mayor to administer the provisions of this chapter.

(b) The Mayor shall reclassify Office of Workers' Compensation Hearing Examiners as Administrative Law Judges ("ALJs") and raise their level of compensation.

(c) The Mayor shall develop performance measures and qualifications for the ALJs for the Office of Workers' Compensation.

(d) Within 2 years following April 16, 1999, the Mayor shall submit to the Council an evaluation of the District's workers' compensation program that shall include the following:

(1) An analysis of the impact of provisions contained in this chapter in reducing costs, improving efficiency, and maintaining access to health care;

(2) A recommendation on whether the District government should assume additional administrative functions related to the workers' compensation program including the statistical analysis and ratemaking now undertaken by the National Council on Compensation Insurance, including an assessment of costs involved;

(3) A recommendation on whether the District should adopt a managed care approach and a preferred provider approach and rationale if such a policy is recommended;

(4) An evaluation of the effectiveness of the Department of Insurance, Securities, and Banking in regulating workers' compensation insurance including the basis of ratemaking decisions and encompassing any recommended changes in law, regulation or administration to improve effectiveness;

(5) An analysis of and recommendation to address the disproportionate burden on District businesses posed by the pre-1982 claims under the Longshore and Harbor Workers' Act including estimates on savings possible if the U.S. Department of Labor is held to administrative cost standards equal to those associated with post-1982 claims;

(6) A recommendation on whether the District should create a "state

accident fund" as exists in other jurisdictions as a means to reduce overall premium costs through more effective risk management; and

(7) An evaluation of the current occupational class codes and a recommendation for restructuring if advisable.

(July 1, 1980, D.C. Law 3-77, § 44, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(l), 46 DCR 891; Apr. 3, 2001, D.C. Law 13-229, § 2, 48 DCR 572; June 11, 2004, D.C. Law 15-166, § 4(jj)(2), 51 DCR 2817.)

Section references. — This section is referred to in § 32-1507.

Prior Codifications. — 1981 Ed., § 36-343.

Effect of amendments. — D.C. Law 13-229 rewrote subsecs. (b) and (c) which had read:

"(b) The Mayor shall study and report to the Council on a proposal to reclassify Office of Workers' Compensation Hearing Examiners as Administrative Law Judges ('ALJs') and to raise their level of compensation.

"(c) The Mayor shall develop performance measures and qualifications for the ALJs for the Office of Workers' Compensation and recommend compensation levels within 90 days after April 16, 1999."

D.C. Law 15-166, in par. (4) of subsec. (d), substituted "Department of Insurance, Securities, and Banking" for "Department of Insurance and Securities Regulation".

Emergency legislation. — For temporary (90 day) amendment of section, see § 4(jj)(2) of Consolidation of Financial Services Emergency Amendment Act of 2004 (D.C. Act 15-381, February 27, 2004, 51 DCR 2653).

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 12-229. — For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 13-229. — Law 13-229, the "Worker's Compensation Administrative Law Judges Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-878, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-506 and transmitted to both Houses of Congress for its review. D.C. Law 13-229 became effective on April 3, 2001.

Legislative history of Law 15-166. — For Law 15-166, see notes following § 31-1004.

References in text. — The Longshore and Harbor Worker's Act, referred to in (d)(5), is codified at 33 U.S.C. § 901 et seq.

§ 32-1544. Severability.

Should a court of competent jurisdiction declare any provision of this chapter to be unconstitutional or beyond the authority of the Council of the District of Columbia, such declaration shall have no effect upon any other provision of this chapter.

(July 1, 1980, D.C. Law 3-77, § 45, 27 DCR 2503.)

Prior Codifications. — 1981 Ed., § 36-344.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

§ 32-1545. Effective date.

This chapter shall take effect on 60 days after the expiration of the District of Columbia Workers' Compensation Act Emergency Amendment Act of 1982, after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-206.02(c)(1).

(July 1, 1980, D.C. Law 3-77, § 47, 27 DCR 2503; Apr. 22, 1982, D.C. Law 4-102, § 2, 29 DCR 1179.)

Prior Codifications. — 1981 Ed., § 36-345.

Legislative history of Law 3-77. — For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Legislative history of Law 4-102. — Law 4-102, the "District of Columbia Workers' Compensation Act of 1979 Amendments Act of 1982," was introduced in Council and assigned Bill No. 4-314, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on February 9, 1982, and February 23, 1982, respectively. Signed by the Mayor on February 26, 1982, it was assigned Act No. 4-161 and transmitted to both Houses of Congress for its review.

References in text. — The "District of Columbia Workers' Compensation Act Emergency Amendment Act of 1982," referred to near the beginning of this section, is D.C. Act 4-160. Act 4-160 expired on May 26, 1982. Consequently, this chapter took effect on July 24, 1982.

CHAPTER 16. WORKFORCE INVESTMENT IMPLEMENTATION.

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Subchapter I. General.

§ 32-1601. Council findings.

The Council of the District of Columbia finds that:

(1) Many District workers need an integrated workforce investment system to help them assume responsibility for building a better future for themselves and their families.

(2) A workforce investment system should be consumer-driven, accountable and responsive to the needs of employers and job seekers.

(3) The goals of an integrated workforce development systems are to:

(A) Coordinate activities at the state and local levels to increase the occupational skills, employment, job retention and earnings of the workforce;

(B) Reduce welfare dependency by helping workers obtain employment that will assure self-sufficiency;

(C) Enhance the productivity and competitiveness of District business and industry;

(D) Encourage ongoing progress toward work preparation from kindergarten through adulthood;

(E) Encourage the attraction and retention of high skill and high wage employers; and

(F) Encourage cooperation among regional workforce development efforts to promote the participation of District residents in the regional economy.

(4) To implement the federal Workforce Investment Act of 1998, approved August 7, 1998 (112 Stat. 936; 29 U.S.C. § 2822), the District of Columbia must apply the necessary resources to carry out its assigned responsibilities and must delegate accountability and authority, as allowed under the federal law, to the governing entity of the workforce investment system.

(5) These objectives are to be accomplished under the direction of the District's Workforce Investment Council. This Council will enlist the views of

a diverse group of business, labor, community, education and government leaders to develop a strategic plan for workforce development in the District of Columbia.

(6) The strategic plan should provide for the development of a comprehensive, consumer-driven employment and career development system that meets the needs of all members of the workforce, including those entering the workforce for the first time, those in transition to employment and those currently employed who seek to enhance their skills for continued career advancement.

(July 18, 2000, D.C. Law 13-150, § 2, 47 DCR 4644; Mar. 2, 2007, D.C. Law 16-191, § 2(a), 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191 substituted "Council of the District of Columbia" for "Council" in the introductory language.

Legislative history of Law 13-150. — Law 13-150, the "Workforce Investment Implementation Act of 2000," was introduced in Council and assigned Bill No. 13-552, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 7, 2000, and April 4, 2000, respectively. Signed by the Mayor on April 24, 2000, it was assigned Act No. 13-337 and transmitted to both Houses of Congress for its review. D.C. Law 13-150 became effective on July 18, 2000.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 32-242.

Mayor's Orders. — Establishment—Workforce Investment Council, see Mayor's Order 2011-114, July 1, 2011 (58 DCR 5868).

§ 32-1602. Definitions.

For the purposes of this subchapter, the term:

(1) "Basic skills deficient" means reading, writing or computing on a level no higher than 8th grade.

(2) "Federal Act" means the federal Workforce Investment Act of 1998, approved August 7, 1998 (112 Stat. 936; 29 U.S.C. § 2822).

(3) "Self-sufficiency" means employment that pays a wage equal to the wage calculated by The Self-Sufficiency Standard for the Washington, DC Metropolitan Area, for the appropriate family composition.

(4) "Service provider" and "provider" mean a provider of employment and training services including a private or public school or institution of higher education, a business, labor organization or a community-based organization.

(July 18, 2000, D.C. Law 13-150, § 3, 47 DCR 4644.)

Legislative history of Law 13-150. — For Law 13-150, see notes following § 32-1601.

§ 32-1602.01. Participant eligibility criteria.

Any individual who receives an Individual Training Account as provided in Chapter 5, section 134 [29 U.S.C. § 2864] of the Federal Act shall be a bona fide resident of the District.

(July 18, 2000, D.C. Law 13-150, § 3a, as added Nov. 13, 2003, D.C. Law 15-39, § 1702, 50 DCR 5668.)

Emergency legislation. — For temporary (90 day) addition, see § 1702 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) addition, see § 1702 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 15-39. — Law 15-39, the "Fiscal Year 2004 Budget Support Act of 2003", was introduced in Council and assigned Bill No. 15-218, which was referred to Committee on Whole. The Bill was adopted on first and second readings on May 6, 2003, and June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to both Houses of Congress for its review. D.C. Law 15-39 became effective on November 13, 2003.

Short title. — Short title of title XVII of Law 15-39: Section 1701 of D.C. Law 15-39 provided that title XVII of the act may be cited as the Residency Requirement for Individual Training Accounts Funded by the Workforce Investment Act Amendment Act of 2003.

§ 32-1603. Workforce Investment Council.

(a) There is created a Workforce Investment Council ("Council") pursuant to section 111(b) and (c) [29 U.S.C. § 2821(b) and (c)] and section 117(c)(4) [29 U.S.C. § 2832 (c)(4)] of the Federal Act, to assist in the development of the State Unified Workforce Plan to carry out the functions described by the Federal Act.

(b) The Council shall assist the Mayor in:

(1) Developing the District's workforce investment system;

(2) Assigning duties and responsibilities to the Department of Human Services ("DHS") and the Department of Employment Services ("DOES") to implement the Federal Act, and to do so in a manner that avoids conflicts of interest and capitalizes on the experience developed by workforce partners who are efficient and effective at meeting the requirements of the Federal Act;

(3) Developing an employment statistics system, as described in section 15(e) of the Wagner-Peyser Act, approved October 13, 1982 (96 Stat. 1392; 29 U.S.C. § 49L-2(e));

(4) Preparing an annual report and submitting it to the Council of the District of Columbia by September 30th of each year;

(5) Establishing performance standards for training and employment programs pursuant to § 32-1606;

(6) Fostering and coordinating initiatives of the District of Columbia Public Schools and the University of the District of Columbia as well as with any institution of higher education accredited by the Middle States Association of Colleges and Schools and located in the District to enhance the contributions of public schools and institutions of higher education to the implementation of the District employment and training policy;

(7) Examining federal and local laws and regulations to assess whether those laws and regulations present barriers to achieving any of the goals of this subchapter. The Council shall, as it deems appropriate, issue to the Mayor and the Council of the District of Columbia reports on its findings, including recommendations for changes in local and federal laws or regulations concerning employment and training programs or service; and

(8) Developing a wage progression strategy that includes mechanisms to help low-income workers upgrade skills to assist them in moving up the career ladder toward self-sufficiency.

(9) Implementing the Educational Stepladder program established by subchapter III of this chapter [§ 32-1651 et seq.], including establishing the

criteria for certificate course approval and working with interested institutions of higher education accredited by the Middle States Association of Colleges and Schools and located in the District of Columbia to develop a curriculum of courses that will meet the institutions's educational mission as well as provide Educational Stepladder students with marketable knowledge or skills that meet the stated workforce needs of business and industry in the District.

(July 18, 2000, D.C. Law 13-150, § 4, 47 DCR 4644; Dec. 7, 2004, D.C. Law 15-205, § 1155(a), 51 DCR 8441; Mar. 25, 2009, D.C. Law 17-353, § 129(a), 56 DCR 1117.)

Effect of amendments. — D.C. Law 15-205, in subsec. (b), substituted "University of the District of Columbia as well as with any institution of higher education accredited by the Middle States Association of Colleges and Schools and located in the District to enhance" for "University of the District of Columbia to enhance" in par. (6), and added par. (9).

D.C. Law 17-353, in subsecs. (b)(4) and (7), substituted "Council of the District of Columbia" for "Council"; and validated a previously made technical correction by substituting "Council" for "Board".

Emergency legislation. — For temporary (90 day) amendment of section, see § 1155(a) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1155(a) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 13-150. — For Law 13-150, see notes following § 32-1601.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 32-1521.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 32-101.

§ 32-1604. Unified workforce plan.

The Council shall develop and submit to the Mayor a single unified workplace plan that outlines a 5-year strategy, with quantitative goals, for the statewide workforce investment system for the District of Columbia in accordance with section 112 of the Federal Act. Upon the Mayor's approval of the state plan, the Mayor shall transmit the State Unified Workforce Plan to the Council of the District of Columbia for a 10-day period of review, excluding days of Council of the District of Columbia recess. If the Council of the District of Columbia does not approve or disapprove the State Unified Workforce Plan by resolution within the 10-day review period, the State Unified Workforce Plan shall be deemed approved. Within 2 years of July 18, 2000, the Unified Workforce Plan shall be amended to also encompass services provided to the Welfare to Work and TANF implementing laws.

(July 18, 2000, D.C. Law 13-150, § 5, 47 DCR 4644; Mar. 25, 2009, D.C. Law 17-353, § 129(b), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 substituted "Council of the District of Columbia" for "Council"; and validated a previously made technical correction by substituting "Council" for "Board".

Legislative history of Law 13-150. — For Law 13-150, see notes following § 32-1601.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 32-101.

Editor's notes. — Establishment and Appointments—D.C. State Rehabilitation Council, see Mayor's Order 2001-173, November 30, 2001 (48 DCR 11586).

§ 32-1605. Labor market analysis.

The Council shall conduct a labor market analysis. The analysis shall:

(1) Identify industries or occupations that have or expect growth, the loss of skilled workers or that have a demand for a subset of workers;

(2) Create a profile and analyze the characteristics of the District's unemployed and underemployed residents, including educational attainment, barriers to employment, geographic concentrations, self-sufficiency needs and access to needed support services;

(3) Identify the entry-level education and skills requirements for the industries or occupations that have or expect a need for workers;

(4) Analyze the entry-level wages and benefits in identified industries or occupations;

(5) Develop a profile of the education, training and support services already in place to prepare workers for the identified industries or occupations;

(6) Identify the mismatch between job seekers and identified industries or occupations where wages and benefits match the needs of the unemployed, in terms of education and training resources; and

(7) Identify opportunities for collaboration with institutions of higher education community-based organizations and economic development and welfare agencies.

(July 18, 2000, D.C. Law 13-150, § 6, 47 DCR 4644; Mar. 25, 2009, D.C. Law 17-353, § 129(c), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction by substituting "Council" for "Board".

Legislative history of Law 13-150. — For Law 13-150, see notes following § 32-1601.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 32-101.

§ 32-1606. Performance based accountability.

(a) Service providers shall be paid only for achieving positive outcomes for participants, such as job placement, job retention and earnings in accordance with the Core Indicators of Performance as described in section 136(b)(2)(A) of the Federal Act, except partial payment to a service provider is permissible when a participant meets the Core Indicator of attaining a recognized credential, pending further payment when the participant enters unsubsidized employment.

(b) The Council shall establish a performance report with quantifiable benchmarks to assess the full range of programs providing education and training services, including WIA, TANF, Welfare to Work, and Vocational Rehabilitation.

(c) The Council shall evaluate the workforce investment system by using the following factors as relevant for individual programs:

(1) The amount and source of funding;

(2) Program entrance and successful completion rates;

(3) Employment and wage information for 6 months and one year after completion of the training;

(4) The relationship of training to employment;
(5) Achievement of industry skill standard certification, where it exists;
(6) Return on public investment;
(7) Employment-related barriers of customers; and
(8) Any other indicators of performance required under the Federal Act.

(July 18, 2000, D.C. Law 13-150, § 7, 47 DCR 4644; Mar. 25, 2009, D.C. Law 17-353, § 129(d), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction by substituting "Council" for "Board".

Legislative history of Law 13-150. — For Law 13-150, see notes following § 32-1601.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 32-101.

§ 32-1607. Employment and training services criteria.

(a) Employment and training services, including on-the-job training, shall not be obtained from a service provider with appropriated funds unless the provider is approved, pursuant to the procedures and criteria established by the Council, which are submitted to the Council of the District of Columbia for a 10-day period of review, excluding days of Council of the District of Columbia recess. If the Council of the District of Columbia does not approve or disapprove the procedures and criteria by resolution within this 10-day period, the procedures and criteria shall be deemed approved.

(1) Each service provider shall certify that none of its officers or employees has, in the past 5 years, been convicted of a felony or a misdemeanor, the underlying basis of which involved workplace safety and health or labor standards.

(2) The service provider shall also certify as to all violations issued by the U.S. Department of Labor and DOES within the past 5 years, and all judgements and settlements, the underlying basis of which involved workplace safety and health or labor standards.

(b) All participants who meet the requirements of an employee pursuant to the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201), in the on-the-job training program shall be compensated at no less than the minimum wage required by § 32-1003.

(c) Each service provider shall make appropriate records available upon request for monitoring or inspection by the Council, including a record:

(1) For each student enrolled, including the student's name and social security number; and

(2) Of all administrative and overhead expenses of the provider, except for employers providing on the job training, that derive from employment and training services funded by the program and the provider's direct expenses for providing the services.

(d) In the case of a provider of vocational training, the Council shall collect the information needed to effectively measure the long-term success of the former trainees of the provider in moving toward self-sufficiency, including obtaining permanent employment and increasing earnings over a period of not

less than one year following the completion of training. The Council shall use the information obtained pursuant to subsection (c) of this section to assist in:

(1) Evaluating the performance of providers of vocational training services;

(2) Determining which providers of vocational training services to approve pursuant to subsection (a) of this section; and

(3) Evaluating the overall effectiveness of training funded by the program.

(July 18, 2000, D.C. Law 13-150, § 8, 47 DCR 4644; Mar. 25, 2009, D.C. Law 17-353, § 129(e), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 substituted "Council of the District of Columbia" for "Council"; and validated a previously made technical correction by substituting "Council" for "Board".

Legislative history of Law 13-150. — For Law 13-150, see notes following § 32-1601.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 32-101.

§ 32-1608. Anti-displacement.

Participants shall not be assigned, placed or be permitted to work for any employer or worksite where:

(1) Any other individual is laid off from the same or substantially equivalent job;

(2) An employer has terminated a regular employee and filled the vacancy with a participant;

(3) An employer has caused an involuntary reduction in the workforce and filled the vacancy with a participant;

(4) An employer has caused an involuntary reduction below full-time hours of any employee in the same or substantially equivalent job;

(5) An employer has caused an involuntary reduction in wages or employment benefits;

(6) Placement of a recipient will violate an existing collective bargaining agreement, unless the labor organization and the employer provide a written concurrence;

(7) The job is created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals;

(8) The placement is the equivalent of filling an established unfilled position vacancy, or is the equivalent of performing a job that is substantially similar to the vacant position, unless the participant is given a bona fide opportunity to apply for the position as an unsubsidized employee after 18 weeks of satisfactory service in the position; or

(9) There is a hiring freeze for positions that are the same or substantially similar to the position performed by the participants.

(July 18, 2000, D.C. Law 13-150, § 9, 47 DCR 4644.)

Legislative history of Law 13-150. — For Law 13-150, see notes following § 32-1601.

§ 32-1609. Grievance procedure.

The Mayor shall direct the Office of Human Rights to establish and maintain a procedure to receive grievances or complaints alleging violations of the Federal Act from participants and other interested or affected parties. The procedure shall be in accordance with section 181(c) [29 U.S.C. § 2931] of the Federal Act.

(July 18, 2000, D.C. Law 13-150, § 10, 47 DCR 4644.)

Legislative history of Law 13-150. — For Law 13-150, see notes following § 32-1601.

§ 32-1610. Use of funds for employment and training activities.

(a) The Council shall advise the Mayor as required pursuant to section 112 [29 U.S.C. § 2822] of the Federal Act and on matters pertaining to the use of funds pursuant to section 134 [29 U.S.C. § 2864] of the Federal Act.

(b) As a part of the core services required by section 134(d)(2)(E)(i) of the Federal Act, the one-stop delivery system, as described in section 134(c) of the Federal Act, shall provide timely listings of all job opportunities and supportive services providers, consistent with this subchapter, to a participant immediately upon application by the participant for services offered by the one-stop delivery system. In addition, core services shall include an initial assessment of aptitudes and abilities that is non-gender biased using tools that assess women's interest in high-wage employment that is nontraditional for women.

(c) Intensive services offered by the one-stop delivery system may include addiction recovery. Consistent with this subchapter, intensive services may also include short-term prevocational services that raise job seekers' basic reading, writing and computational skills to enable them to compete for jobs.

(d) The one stop delivery system shall provide a thorough assessment of job seekers' skills and employment barriers. If individuals are basic skills deficient or face other serious barriers to employment, such as a poor work history or long-term absence from the workforce, or TANF receipt, the one-stop operator shall determine that they are unable to obtain employment through core services.

(e) Consistent with this subchapter, job seekers who are employed, but do not earn a self-sufficient wage, shall be eligible for intensive services.

(f) Any funds expended pursuant to this section shall be appropriated by the Council of the District of Columbia.

(July 18, 2000, D.C. Law 13-150, § 11, 47 DCR 4644; Mar. 25, 2009, D.C. Law 17-353, § 129(f), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353, in subsecs. (a) and (f), validated previously made technical corrections.

Legislative history of Law 13-150. — For Law 13-150, see notes following § 32-1601.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 32-101.

§ 32-1611. One-stop partners.

(a) The Council shall ensure that the District's one-stop delivery system under the Federal Act is the foundation of local service delivery to employers and participants.

(b) One-stop partners shall include the Income Maintenance Administration, Office of Early Childhood Development, and the Medicaid program.

(July 18, 2000, D.C. Law 13-150, § 12, 47 DCR 4644; Mar. 25, 2009, D.C. Law 17-353, § 129(g), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction by substituting "Council" for "Board".

Legislative history of Law 13-150. — For Law 13-150, see notes following § 32-1601.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 32-101.

§ 32-1612. Regional cooperation.

This subchapter encourages the Council to work with its Maryland and Virginia counterparts to develop a regional information sharing system that allows one-stops and welfare agencies in the District and surrounding jurisdictions to access information regarding regional employment opportunities, job training providers, and support services.

(July 18, 2000, D.C. Law 13-150, § 13, 47 DCR 4644; Mar. 25, 2009, D.C. Law 17-353, § 129(h), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction by substituting "Council" for "Board".

Legislative history of Law 13-150. — For Law 13-150, see notes following § 32-1601.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 32-101.

§ 32-1613. Disclosure of information by the Council.

The Council shall not withhold information from the public regarding its operations, procedures, and decisions that would otherwise be subject to disclosure under subchapter II of Chapter 5 of Title 2.

(July 18, 2000, D.C. Law 13-150, § 14, 47 DCR 4644; Mar. 25, 2009, D.C. Law 17-353, § 129(i), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction by substituting "Council" for "Board".

Legislative history of Law 13-150. — For Law 13-150, see notes following § 32-1601.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 32-101.

Subchapter II. Workforce Investment Implementation Individual Training Accounts Limitation.

§ 32-1631. Limits on funding Individual Training Accounts.

(a) Beginning January 1, 2005, no entity providing training services will be eligible to receive funding for more than 5 Individual Training Accounts in a calendar year unless at least 25% of the students participating in the entity's training programs are paying commercially established tuition funded by sources other than the District government.

(b) Beginning January 1, 2006, no entity providing training services will be eligible to receive funding for more than 5 Individual Training Accounts in a calendar year unless at least 50% of the students participating in the entity's training programs are paying commercially established tuition funded by sources other than the District government.

(c) An entity providing training services shall certify to the Mayor on July 1st and January 2nd of each year:

(1) The total number of students enrolled in the entity's training programs;

(2) The number of students who are funded by sources other than the District government; and

(3) The percentage calculated using the number in paragraph (1) of this subsection as the denominator and the number in paragraph (2) of this subsection as the numerator.

(Dec. 7, 2004, D.C. Law 15-205, § 1142, 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) workforce investment implementation individual training accounts limitation provisions, see § 1142 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) workforce investment implementation individual training accounts limitation provisions, see § 1142 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 32-1521.01.

Short title. — Short title of subtitle M of title I of Law 15-205: Section 1141 of D.C. Law 15-205 provided that subtitle M of title I of the act may be cited as the Workforce Investment Implementation Individual Training Accounts Limitation Amendment Act of 2004.

Subchapter III. Educational Stepladder Program.

§ 32-1651. Establishment of the Educational Stepladder program.

(a) There is established an Educational Stepladder program. The Educational Stepladder program shall provide funding for undertrained and unemployed District residents to enroll in certain certificate courses that are, in consultation with the Department of Employment Services ("DOES"):

(1) Offered by institutions of higher education accredited by the Middle

States Association of Colleges and Schools and located in the District of Columbia; and

(2) Approved by the Workforce Investment Council ("Council"), established by § 32-1603.

(b) An institution of higher education described in subsection(a)(1) of this section that seeks to become a participant in the Educational Stepladder program is encouraged to enter into discussions with business and industry leaders to ascertain what workforce skills and knowledge are in demand so that the institution can design its course offerings to meet actual workforce needs in the District. The Council shall approve only courses that are:

(1) Tailored to the needs of the job market in the District;

(2) Designed to provide the student with marketable knowledge or a marketable skill;

(3) A maximum of 12 months in duration; and

(4) Student aid or grant eligible.

(Dec. 7, 2004, D.C. Law 15-205, § 1152, 51 DCR 8441; Mar. 2, 2007, D.C. Law 16-191, § 99(a), 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191, in subsecs. (a)(2) and (b), substituted "Council" for "Board".

Temporary Addition of Section. — For temporary (225 day) additions, see §§ 2 to 7 of Educational Stepladder Temporary Act of 2002 (D.C. Law 14-111, April 13, 2002, law notification 49 DCR 4059).

Emergency legislation. — For temporary (90 day) educational stepladder, see §§ 2 to 7 of Educational Stepladder Emergency Act of 2001 (D.C. Act 14-220, December 21, 2001, 49 DCR 400).

For temporary (90 day) educational stepladder, see §§ 2 to 7 of Educational Stepladder Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-303, March 25, 2002, 49 DCR 3395).

For temporary (90 day) addition, see § 1152 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 1152 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 32-1521.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 32-242.

Short title. — Short title of subtitle N of title I of Law 15-205: Section 1151 of D.C. Law 15-205 provided that subtitle N of title I of the act may be cited as the Educational Stepladder Act of 2004.

§ 32-1652. Funding of program.

(a) The DOES shall make individual training account ("ITA") funds received by the District pursuant to the federal Workforce Investment Act of 1998, approved August 7, 1998 (112 Stat. 936; 29 U.S.C. § 2801 et seq.), available to pay for a student's enrollment in a certificate course; provided, that the course has been approved pursuant to the procedures and criteria established by this subtitle, and by the Council, in consultation with the DOES.

(b) The Council's proposed procedures and criteria shall be submitted to the Council of the District of Columbia for a 30-day period of review, excluding days of Council of District of Columbia recess. If the Council of the District of Columbia does not approve or disapprove the procedures and criteria by resolution within this 30-day period, the procedures and criteria shall be deemed approved.

(c) Prior to expending ITA funds to pay for a student's enrollment in an

approved course, the institution or the student shall apply for any grant funds available to the institution or to the student for this purpose. In the case of a student who meets the eligibility requirements for a grant and who has made timely application for such grant but the funds have not been received by the institution, the institution shall credit the student's account in the amount of the grant. Upon receipt of the grant, the institution shall apply the funds received to the student's account. In the case where a grant is available, ITA funds shall be used to the extent that the cost of the course exceeds the amount of grant funds received.

(Dec. 7, 2004, D.C. Law 15-205, § 1153, 51 DCR 8441; Mar. 2, 2007, D.C. Law 16-191, § 99(b), 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191, in subsecs. (a) and (b), substituted "Council" for "Board"; and, in subsec. (b), substituted "Council of the District of Columbia" for "Council".

Emergency legislation. — For temporary (90 day) addition, see § 1153 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 1153 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 32-1521.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 32-242.

§ 32-1653. Funding of students.

Pursuant to § 51-109.01, a student enrolled in an Educational Stepladder program approved course and who maintains a satisfactory level of attendance and achievement in the program and who is:

(1) Receiving unemployment insurance compensation shall be eligible for an extension of benefits for the duration of the program, up to a maximum amount of 52 times his or her weekly benefit amount, or 100% of the wages for employment paid the individual by employers during his or her base period, whichever is the lesser; this total amount includes regular benefits and any federal extension that may be in effect; or

(2) Not receiving unemployment insurance compensation may be eligible for a weekly monetary benefit equal to the unemployment insurance compensation weekly benefit amount a person earning minimum wage would receive, to the extent that funds are available, for the duration of the program, up to a maximum of 52 times the calculated weekly benefit.

(Dec. 7, 2004, D.C. Law 15-205, § 1154, 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 1153 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 1153 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 32-1521.01.

Subchapter IV. Adult Training Funding.

§ 32-1671. Use of local funds designated for adult training.

(a) No more than 5% of the budgeted amount approved for adult training in the Department of Employment Services ("DOES") shall be used for administration.

(b) The DOES shall ensure that funding supports training for jobs that:

(1) Currently exist in the District;

(2) Are in emerging industries, in the District;

(3) Offer career advancement; and

(4) Are in industries that are hiring and that offer career advancement.

(c) Funding opportunities shall be open to the broadest range of District workforce development providers, not solely those under the Workforce Investment Act of 1998, approved August 7, 1998 (112 Stat. 936; 20 U.S.C. § 2822), or the Temporary Assistance to Needy Families program.

(d) The DOES shall require organizations that receive funding to demonstrate how the funds were utilized. The DOES shall require each organization that receives funding to report the number of residents placed in jobs, including:

(1) Titles and job descriptions;

(2) Starting wage;

(3) Starting hours per week;

(4) Starting benefits, if any;

(5) The retention number after:

(A) Three months;

(B) Six months; and

(C) One year;

(6) Wages after one year;

(7) Hours of work per week after one year; and

(8) Benefits, if any, after one year.

(e) The DOES shall encourage collaboration, particularly with organizations that offer adult literacy and multiple services, and shall give preference in funding to providers that apply for funding collectively and can demonstrate the ability to provide a wide range of job training services.

(Mar. 3, 2010, D.C. Law 18-111, § 2261, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 2261 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

Legislative history of Law 18-111. — Law 18-111, the "Fiscal Year 2010 Budget Support Act of 2009", was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Short title. — Short title: Section 2260 of D.C. Law 18-111 provided that subtitle BB of title II of the act may be cited as the "Adult Training Funding Act of 2009".

TITLE 33. PARTNERSHIPS. [REPEALED].

SUBTITLE I. GENERAL PROVISIONS.

Chapter
1. Uniform Partnership Act (1996). [Repealed].
2. Uniform Limited Partnership Act (1987). [Repealed].
3. Dissolution and Payment of Debts. [Repealed].

SUBTITLE II. REPEALED PROVISIONS.

4. Uniform Partnership Act (1962). [Repealed].
5. Uniform Limited Partnership Act (1962). [Repealed].

SUBTITLE I. GENERAL PROVISIONS.

CHAPTER 1. UNIFORM PARTNERSHIP ACT (1996). [REPEALED].

Subchapter I. General Provisions

Sec.
33-101.01 to 33-101.07. [Repealed].

Subchapter II. Nature of Partnership

33-102.01 to 33-102.04. [Repealed].

Subchapter III. Relations of Partners to Persons Dealing with Partnership

33-103.01 to 33-103.08. [Repealed].

Subchapter IV. Relations of Partners to Each Other and to Partnership

33-104.01 to 33-104.06. [Repealed].

Subchapter V. Transferees and Creditors of Partner

33-105.01 to 33-105.04. [Repealed].

Subchapter VI. Partner's Dissociation

33-106.01 to 33-106.03. [Repealed].

Subchapter VII. Partner's Dissociation When Business not Wound Up

Sec.
33-107.01 to 33-107.05. [Repealed].

Subchapter VIII. Winding Up Partnership Business

33-108.01 to 33-108.07. [Repealed].

Subchapter IX. Conversions and Mergers

33-109.01 to 33-109.09. [Repealed].

Subchapter X. Limited Liability Partnership

33-110.01 to 33-110.04. [Repealed].

Subchapter XI. Foreign Limited Liability Partnership

33-111.01 to 33-111.06. [Repealed].

Subchapter XII. Miscellaneous Provisions

33-112.01, 33-112.02. [Repealed].
33-112.03. [Reserved].
33-112.04. [Repealed].

Subchapter I. General Provisions.

§ 33-101.01. Definitions. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 101, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-151.1.

Legislative history of Law 11-234. — Law 11-234, the "Uniform Partnership Act of 1996," was introduced in Council and assigned Bill No. 11-344, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-494 and transmitted to both Houses of Congress for its review. D.C. Law 11-234 became effective on April 9, 1997.

Legislative history of Law 18-378. — Law 18-378, the "District of Columbia Official Code Title 29 (Business Organizations) Enactment Act of 2009", was introduced in Council and assigned Bill No. 18-500, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 27, 2011, it was assigned Act No. 18-724 and transmitted to both Houses of Congress for its review. D.C. Law 18-378 became effective on July 2, 2011.

Editor's notes. — For Uniform Partnership Act of 2010, see, now, § 29-601.01 et seq.

Applicability date of D.C. Law 18-378: Section 5 of D.C. Law 18-378, as amended by section 7082 of D.C. Law 19-21, provided: "Sec. 5. Applicability. This act shall apply as of January 1, 2012.".

§ 33-101.02. Knowledge and notice. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 102, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-151.2.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-101.03. Effect of partnership agreement; nonwaivable provisions. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 103, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-151.3.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-101.04. Supplemental principles of law. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 104, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-151.4.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-101.05. Execution, filing, and recording of statements. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 105, 44 DCR 777; Mar. 3, 2010, D.C. Law 18-111, § 2046(a), 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 2028(a), 57 DCR 6242; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-151.5.

Temporary Amendment of Section. — Section 208(a) of D.C. Law 18-222 rewrote subsec. (f) to read as follows:

"(f)(1) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may establish and revise fees and charges for the filing of documents and issuance of certificates and other documents, providing certified copies of statements, recording statements, and for taking other actions under this act.

"(2) The proposed rules issued pursuant to paragraph (1) of this subsection shall be submitted to the Council for a 90-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 90-day review period, the proposed rules shall be deemed disapproved.".

Section 2002(b) of D.C. Law 18-222 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2046(a) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2046(a) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 208(a) of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) amendment of section, see § 208(a) of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

For temporary (90 day) amendment of section, see § 2028(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-111. — Law 18-111, the "Fiscal Year 2010 Budget Support Act of 2009", was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Legislative history of Law 18-223. — Law 18-223, the "Fiscal Year 2011 Budget Support Act of 2010", was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

Delegation of Authority. — Delegation of Authority Under the Uniform Partnership Act of 1996, see Mayor's Order 2003-101, July 30, 2003 (50 DCR 6744).

§ 33-101.06. Governing law. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 106, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-151.6.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-101.07. Partnership subject to amendment or repeal of chapter. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 107, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-151.7.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

Subchapter II. Nature of Partnership.

§ 33-102.01. Partnership as entity. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 201, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-152.1.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-102.02. Formation of partnership. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 202, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 172.)

Prior Codifications. — 1981 Ed., § 41-152.2.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-102.03. Partnership property. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 203, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-152.3.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-102.04. When property is partnership property. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 204, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-152.4.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

Subchapter III. Relations of Partners to Persons Dealing with Partnership.

§ 33-103.01. Partner agent of partnership. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 301, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-153.1.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-103.02. Transfer of partnership property. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 302, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-153.2.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-103.03. Statement of partnership authority. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 303, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-153.3.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-103.04. Statement of denial. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 304, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-153.4.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-103.05. Partnership liable for partner's actionable conduct. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 305, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-153.5.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-103.06. Partner's liability. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 306, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-153.6.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-103.07. Actions by and against partnership and partners. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 307, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-153.7.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-103.08. Liability of purported partner. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 308, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-153.8.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

Subchapter IV. Relations of Partners to Each Other and to Partnership.

§ 33-104.01. Partner's rights and duties. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 401, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-154.1.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-104.02. Distributions in kind. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 402, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-154.2.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-104.03. Partner's rights and duties with respect to information. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 403, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-154.3.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-104.04. General standards of partner's conduct. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 404, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-154.4.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-104.05. Actions by partnership and partners. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 405, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-154.5.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-104.06. Continuation of partnership beyond definite term or particular undertaking. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 406, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 172.)

Prior Codifications. — 1981 Ed., § 41-154.6.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

Subchapter V. Transferees and Creditors of Partner.

§ 33-105.01. Partner not co-owner of partnership property. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 501, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-155.1.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-105.02. Partner's transferable interest in partnership. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 502, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-155.2.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-105.03. Transfer of partner's transferable interest. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 503, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-155.3.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-105.04. Partner's transferable interest subject to charging order. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 504, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-155.4.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

Subchapter VI. Partner's Dissociation.

§ 33-106.01. Events causing partner's dissociation. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 601, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-156.1.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-106.02. Partner's power to dissociate; wrongful dissociation. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 602, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-156.2.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-106.03. Effect of partner's dissociation. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 603, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-156.3.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

Subchapter VII. Partner's Dissociation When Business not Wound Up.

§ 33-107.01. Purchase of dissociated partner's interest. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 701, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-157.1.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-107.02. Dissociated partner's power to bind and liability to partnership. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 702, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-157.2.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-107.03. Dissociated partner's liability to other persons. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 703, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-157.3.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

Editor's notes. — Uniform Law: This section is based upon § 703 of the Uniform Partnership Act (1997 Act).

§ 33-107.04. Statement of dissociation. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 704, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-157.4.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-107.05. Continued use of partnership name. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 705, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-157.5.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

Subchapter VIII. Winding Up Partnership Business.

§ 33-108.01. Events causing dissolution and winding up of partnership business. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 801, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-158.1.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-108.02. Partnership continues after dissolution. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 802, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-158.2.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-108.03. Right to wind up partnership business. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 803, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-158.3.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-108.04. Partner's power to bind partnership after dissolution. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 804, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-158.4.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-108.05. Statement of dissolution. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 805, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-158.5.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-108.06. Partner's liability to other partners after dissolution. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 806, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-158.6.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-108.07. Settlement of accounts and contributions among partners. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 807, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-158.7.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

Subchapter IX. Conversions and Mergers.

§ 33-109.01. Definitions. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 901, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-159.1.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-109.02. Conversion of partnership to limited partnership. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 902, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-159.2.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-109.03. Conversion of limited partnership to partnership. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 903, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-159.3.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-109.04. Effect of conversion; entity unchanged. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 904, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-159.4.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-109.05. Merger of partnerships. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 905, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-159.5.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-109.06. Effect of merger. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 906, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-159.6.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-109.07. Statement of merger. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 907, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-159.7.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-109.08. Exchange. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 908, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-159.8.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-109.09. Nonexclusive. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 909, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-159.9.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

Subchapter X. Limited Liability Partnership.

§ 33-110.01. Statement of qualification. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 1001, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-160.1.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-110.02. Name. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 1002, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-160.2.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-110.03. Biennial report. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 1003, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-160.3.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-110.04. Registration and fees. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 1004, 44 DCR 777; Mar. 3, 2010, D.C. Law 18-111, § 2046(b), 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 2028(b), 57 DCR 6242; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-160.4.

Temporary Amendment of Section. — Section 208(b) of D.C. Law 18-222 rewrote subsecs. (a) and (b) to read as follows:

"(a) The Mayor may require that a limited

liability partnership file a statement of qualification or statement of foreign qualification, or cancellation thereof or amendment thereto, a biennial report, and other relevant statements or documents, on forms provided by the Mayor.

"(b)(1) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may establish and revise fees and charges for the filing of documents and issuance of certificates and other documents, providing certified copies of statements, recording statements, and for taking other actions under this act.

"(2) The proposed rules issued pursuant to paragraph (1) of this subsection shall be submitted to the Council for a 90-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 90-day review period, the proposed rules shall be deemed disapproved.".

Section 2002(b) of D.C. Law 18-222 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2046(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2046(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 208(b) of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) amendment of section, see § 208(b) of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

For temporary (90 day) amendment of section, see § 2028(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 33-101.05.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 33-101.05.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

Subchapter XI. Foreign Limited Liability Partnership.

§ 33-111.01. Law governing foreign limited liability partnership. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 1101, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-161.1.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-111.02. Statement of foreign qualification. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 1102, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-161.2.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see His-

torical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-111.03. Effect of failure to qualify. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 1103, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-161.3.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-111.04. Activities not constituting transacting business. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 1104, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-161.4.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-111.05. Action by Attorney General. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 1105, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-161.5.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-111.06. Applicability of act to foreign and interstate commerce. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 1106, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-161.6.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

Subchapter XII. Miscellaneous Provisions.

§ 33-112.01. Uniformity of application and construction. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 1201, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-162.1.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-112.02. Savings clause. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 1202, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-162.2.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-112.03. [Reserved].

Reserved.

§ 33-112.04. Applicability. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-234, § 1204, 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(x), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-162.3.

Legislative history of Law 11-234. — For legislative history of D.C. Law 11-234, see Historical and Statutory Notes following § 33-101.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

CHAPTER 2. UNIFORM LIMITED PARTNERSHIP ACT (1987). [REPEALED].

Subchapter I. General Provisions

Sec.
33-201.01 to 33-201.09. [Repealed].

Subchapter II. Formation, Certificate of Limited Partnership

33-202.01 to 33-202.08. [Repealed].

Subchapter III. Limited Partners

33-203.01 to 33-203.05. [Repealed].

Subchapter IV. General Partners

33-204.01 to 33-204.05. [Repealed].

Subchapter V. Finance

33-205.01 to 33-205.04. [Repealed].

Subchapter VI. Distributions and Withdrawal

33-206.01 to 33-206.08. [Repealed].

Subchapter VII. Assignment of Partnership Interests

Sec.
33-207.01 to 33-207.05. [Repealed].

Subchapter VIII. Dissolution

33-208.01 to 33-208.04. [Repealed].

Subchapter IX. Foreign Limited Partnerships

33-209.01 to 33-209.10. [Repealed].

Subchapter X. Derivative Actions

33-210.01 to 33-210.04 [Repealed].

Subchapter XI. Miscellaneous

33-211.01 to 33-211.04. [Repealed].
33-211.05. [Reserved].
33-211.06, 33-211.07. [Repealed].

Subchapter I. General Provisions.

§ 33-201.01. Definitions. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 101, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-401.

Legislative history of Law 7-49. — Law 7-49, "Uniform Limited Partnership Act of 1987," was introduced in Council and assigned Bill No. 7-227, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 14, 1987 and September 29, 1987, respectively. Signed by the Mayor on October 16, 1987, it was assigned Act No. 7-82 and transmitted to both Houses of Congress for its review.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

Editor's notes. — Applicability date of D.C. Law 18-378: Section 5 of D.C. Law 18-378, as amended by section 7082 of D.C. Law 19-21, provided: "Sec. 5. Applicability. This act shall apply as of January 1, 2012.".

§ 33-201.02. Name. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 102, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-402.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-201.03. Reservation of name. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 103, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-403.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-201.04. Principal office and registered agent. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 104, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-404.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-201.05. Records to be kept. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 105, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-405.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-201.06. Nature of business. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 106, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-406.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-201.07. Business transactions of partner with partnership. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 107, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-407.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-201.08. Applicability. [Repealed].

Repealed.

(Dec. 10, 1987; D.C. Law 7-49; § 108, 34 DCR 6856; June 19, 2001, D.C. Law 13-313, § 15, 48 DCR 1873; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-408.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 13-313. — Law 13-313, the "Technical Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-879, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 19, 2001, it was assigned Act No. 13-574 and transmitted to both Houses of Congress for its review. D.C. Law 13-313 became effective on June 19, 2001.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-201.09. Indemnification. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 109, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-409.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

Subchapter II. Formation, Certificate of Limited Partnership.

§ 33-202.01. Certificate of limited partnership. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 201, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-421.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-202.02. Amendment to certificate of limited partnership. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 202, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-422.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-202.03. Cancellation of certificate of limited partnership. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 203, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-423.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-202.04. Execution of certificate. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 204, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-424.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-202.05. Amendment or cancellation by judicial act. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 205, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-425.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-202.06. Filing with the Department. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 206, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-426.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-202.07. Liability for false statement in certificate. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 207, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-427.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-202.08. Merger and consolidation. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 208, 34 DCR 6856; Sept. 10, 1992, D.C. Law 9-144, § 5, 39 DCR 4863; July 23, 1994, D.C. Law 10-138, § 79, 41 DCR 3010; Apr. 9, 1997, D.C. Law 11-234, § 1205(1), 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-428.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 9-144. — Law 9-144, the "District of Columbia Corporation Law Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-64, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 6, 1992, and June 2, 1992, respectively. Signed by the Mayor on June 19, 1992, it was assigned Act No. 9-224 and transmitted to both Houses of Congress for its review. D.C. Law 9-144 became effective on September 10, 1992.

Legislative history of Law 10-138. — Law 10-138, the "Limited Liability Company Act of 1994," was introduced in Council and assigned Bill No. 10-277, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 12, 1994, and May 3, 1994, respectively. Signed by the Mayor on May 18, 1994, it was assigned Act No. 10-243 and transmitted to both Houses of Congress for its review. D.C. Law 10-138 became effective on July 23, 1994.

Legislative history of Law 11-234. — Law 11-234, the "Uniform Partnership Act of 1996," was introduced in Council and assigned Bill No. 11-344, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-494 and transmitted to both Houses of Congress for its review. D.C. Law 11-234 became effective on April 9, 1997.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

Subchapter III. Limited Partners.

§ 33-203.01. Admission of limited partners. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 301, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-431.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-203.02. Voting. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 302, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-432.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-203.03. Liability to third parties. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 303, 34 DCR 6856; July 25, 1995, D.C. Law 11-30, § 9, 42 DCR 1547; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-433.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 11-30. — Law 11-30, the "Technical Amendments Act of 1995," was introduced in Council and assigned Bill No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 7, 1995, and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-203.04. Person erroneously believing himself or herself a limited partner. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 304, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-434.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-203.05. Information. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 305, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-435.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

Subchapter IV. General Partners.

§ 33-204.01. Admission of additional general partners. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 401, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-441.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-204.02. Ceasing to be a general partner. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 402, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-442.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-204.03. Powers and liabilities. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 403, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-443.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-204.04. Contributions by general partner. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 404, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-444.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-204.05. Voting. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 405, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-445.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

Subchapter V. Finance.

§ 33-205.01. Form of contribution. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 501, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-451.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-205.02. Liability for contribution. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 502, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-452.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-205.03. Sharing of profits and losses. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 503, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-453.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-205.04. Sharing of distributions. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 504, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-454.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

Subchapter VI. Distributions and Withdrawal.

§ 33-206.01. Interim distributions. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 601, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-461.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-206.02. Withdrawal of general partner. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 602, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-462.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-206.03. Withdrawal of limited partner. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 603, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-463.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-206.04. Distribution upon withdrawal. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 604, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-464.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-206.05. Distribution in kind. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 605, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-465.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-206.06. Status as creditor. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 606, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-466.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-206.07. Limitations on return of contributions. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 607, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-467.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-206.08. Liability upon return of contribution. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 608, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Cross references. — Partnerships, additional limited partners, assignment of a partnership interest, see § 33-207.03.
Prior Codifications. — 1981 Ed., § 41-468.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

Subchapter VII. Assignment of Partnership Interests.

§ 33-207.01. Nature of partnership interest. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 701, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-471.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-207.02. Assignment of partnership interest. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 702, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-472.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-207.03. Right of assignee to become limited partner. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 703, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-473.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-207.04. Death, incompetency, insolvency, or termination of a general partner. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 704, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-474.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-207.05. Rights of creditor. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 705, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-475.
Legislative history of Law 7-49. — For

legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

Subchapter VIII. Dissolution.

§ 33-208.01. Events of dissolution. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 801, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-481.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-208.02. Judicial dissolution. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 802, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-482.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-208.03. Winding up. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 803, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-483.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-208.04. Distribution of assets. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 804, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-484.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

Subchapter IX. Foreign Limited Partnerships.

§ 33-209.01. Law governing foreign limited partnerships. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 901, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-491.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-209.02. Certificate of authority. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 902, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-492.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-209.03. Issuance of certificate of authority. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 903, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-493.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-209.04. Name. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 904, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-494.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-209.05. Changes and amendments. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 905, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-495.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-209.06. Cancellation of certificate of authority. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 906, § 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-496.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-209.07. Doing business without a certificate of authority. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 907, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-497.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-209.08. Doing business. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 908, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-498.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.
Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-209.09. Assent to laws of the District. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 909, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-499.
Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-209.10. Compliance with subchapter is not consent to suit. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 910, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-499.1.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

Subchapter X. Derivative Actions.

§ 33-210.01. Right of action. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 1001, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-499.11.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-210.02. Proper plaintiff. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 1002, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-499.12.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-210.03. Pleading. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 1003, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-499.13.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For

history of Law 18-378, see notes under § 33-101.01

§ 33-210.04. Expenses. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 1004, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-499.14.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

Subchapter XI. Miscellaneous.

§ 33-211.01. Construction and application. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 1101, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-499.21.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-211.02. Rules; fees; notice. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 1102, 34 DCR 6856; Mar. 3, 2010, D.C. Law 18-111, § 2047, 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 2029, 57 DCR 6242; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-499.22.

Temporary Amendment of Section. — Section 209 of D.C. Law 18-222 rewrote subsec. (b) to read as follows:

"(b) The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may establish fees and additional charges as necessary for the implementation of this act.".

Section 2002(b) of D.C. Law 18-222 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2047 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2047 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 209 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) amendment of section, see § 209 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

For temporary (90 day) amendment of section, see § 2029 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 7-49. — For

legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 33-101.05.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 33-101.05.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-211.03. Penalties. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 1103, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-499.23.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-211.04. Action by Attorney General. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 1104, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-499.24.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-211.05. [Reserved].

Reserved.

§ 33-211.06. Transition. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 1106, 34 DCR 6856; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-499.25.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

§ 33-211.07. Conversion of limited partnership to limited liability partnership. [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-49, § 1107, 34 DCR 6856, as added Jan. 1, 1998,

D.C. Law 11-234, § 1205(2), 44 DCR 777; July 2, 2011, D.C. Law 18-378, § 3(y), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-499.26.

Legislative history of Law 7-49. — For legislative history of D.C. Law 7-49, see Historical and Statutory Notes following § 33-201.01.

Legislative history of Law 11-234. — Law 11-234, the "Uniform Partnership Act of 1996," was introduced in Council and assigned Bill No. 11-344, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-494 and transmitted to both Houses of Congress for its review. D.C. Law 11-234 became effective on April 9, 1997.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01

CHAPTER 3. DISSOLUTION AND PAYMENT OF DEBTS. [REPEALED].

Sec.
33-301 to 33-304. [Repealed].

§ 33-301. Composition or compromise of partner with creditors on dissolution — Effect on discharge. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1494; July 2, 2011, D.C. Law 18-378, § 3(k)(9), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-301. 1973 Ed., § 41-201.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

Editor's notes. — Applicability date of D.C. Law 18-378: Section 5 of D.C. Law 18-378, as amended by section 7082 of D.C. Law 19-21, provided: "Sec. 5. Applicability. This act shall apply as of January 1, 2012.".

§ 33-302. Same — Memorandum of exoneration; evidence as bar of creditor's right of recovery. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1495; July 2, 2011, D.C. Law 18-378, § 3(k)(9), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-302. 1973 Ed., § 41-202.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-303. Same — Other partners not discharged. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1496; July 2, 2011, D.C. Law 18-378, § 3(k)(9), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-303. 1973 Ed., § 41-203.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

§ 33-304. Same — Partners' right of contribution. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1497; July 2, 2011, D.C. Law 18-378, § 3(k)(9), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 41-304. 1973 Ed., § 41-204.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 33-101.01.

SUBTITLE II. REPEALED PROVISIONS.

CHAPTER 4. UNIFORM PARTNERSHIP ACT (1962). [REPEALED].

Sec.
33-401 to 33-448. [Repealed].

§ 33-401. Definition of terms. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 636, Pub. L. 87-709, § 2; Oct. 15, 1993, D.C. Law 10-34, § 2(a), 40 DCR 5764; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-101. 1973 Ed., § 41-301.

Legislative history of Law 11-234. — Law 11-234, the "Uniform Partnership Act of 1996," was introduced in Council and assigned Bill No. 11-344, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-494 and transmitted to both Houses of Congress for its review. D.C. Law 11-234 became effective on April 9, 1997.

Editor's notes. — Chapter repealed effective January 1, 1998: Section 1203 of D.C. Law 11-234 provided that §§ 41-101 through 41-148 §§ 33-401 through 33-448, 2001 Ed. are repealed effective January 1, 1998.

D.C. Law 12-184, § 3 (45 DCR 7796), eff. March 26, 1999, amends §§ 41-101, 41-102 § 33-401, 33-402, 2001 Ed. without reference to their prior repeal.

§ 33-402. Interpretation of knowledge and notice. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 636, Pub. L. 87-709, § 3; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-102. 1973 Ed., § 41-302.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

Editor's notes. — D.C. Law 12-184, § 3 (45 DCR 7796), eff. March 26, 1999, amends §§ 41-101, 41-102 § 33-401, 33-402, 2001 Ed. without reference to their prior repeal.

§ 33-403. Rules of construction. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 636, Pub. L. 87-709, § 4; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-103. 1973 Ed., § 41-303.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-404. Rules for cases not provided for in this chapter. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 636, Pub. L. 87-709, § 5; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-104. 1973 Ed., § 41-304.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-405. "Partnership" defined. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 636, Pub. L. 87-709, § 6; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-105. 1973 Ed., § 41-305.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-405.01. Registration and fees. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 637, Pub. L. 87-709, § 6a, as added by Oct. 15, 1993, D.C. Law 10-34, § 2(b), 40 DCR 5764; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-105.1.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-406. Rules for determining the existence of a partnership. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 637, Pub. L. 87-709, § 7; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-106. 1973 Ed., § 41-306.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-407. Partnership property; acquisition and conveyance of title. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 637, Pub. L. 87-709, § 8; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-107. 1973 Ed., § 41-307.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-408. Role of partners in partnership business; acts requiring authorization for binding; acts requiring authorization by all partners. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 637, Pub. L. 87-709, § 9; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-108. 1973 Ed., § 41-308.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-409. Conveyance of real property of the partnership. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 638, Pub. L. 87-709, § 10; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-109. 1973 Ed., § 41-309.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-410. Admissions or representations deemed binding on partnership. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 638, Pub. L. 87-709, § 11; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-110. 1973 Ed., § 41-310.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-411. Partnership charged with knowledge of or notice to partner. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 638, Pub. L. 87-709, § 12; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-111. 1973 Ed., § 41-311.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-412. Liability — Wrongful act of partner. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 638, Pub. L. 87-709, § 13; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-112. 1973 Ed., § 41-312.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-413. Liability — Partner's breach of trust. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 639, Pub. L. 87-709, § 14; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-113. 1973 Ed., § 41-313.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-414. Liability — Extent for partnership. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 639, Pub. L. 87-709, § 15; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-114. 1973 Ed., § 41-314.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-415. Liability — Partner by estoppel. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 639, Pub. L. 87-709, § 16; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-115. 1973 Ed., § 41-315.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-416. Liability — Incurred by incoming partner. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 639, Pub. L. 87-709, § 17; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-116. 1973 Ed., § 41-316.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-417. Rules determining rights and duties of partners. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 639, Pub. L. 87-709, § 18; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-117. 1973 Ed., § 41-317.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-418. Partnership books; right to inspect. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 640, Pub. L. 87-709, § 19; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-118. 1973 Ed., § 41-318.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-419. Duty of partners to render information. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 640, Pub. L. 87-709, § 20; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-119. 1973 Ed., § 41-319.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-420. Partner accountable as a fiduciary. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 640, Pub. L. 87-709, § 21; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-120. 1973 Ed., § 41-320.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-421. Right to an account. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 640, Pub. L. 87-709, § 22; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-121. 1973 Ed., § 41-321.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-422. Continuation of partnership beyond fixed term; rights and duties of partners. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 640, Pub. L. 87-709, § 23; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-122. 1973 Ed., § 41-322.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-423. Property rights of partner — Extent. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 641, Pub. L. 87-709, § 24; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-123. 1973 Ed., § 41-323.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-424. Property rights of partner — Specific partnership property; assignability; attachment or execution. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 641, Pub. L. 87-709, § 25; Oct. 1, 1976, D.C. Law 1-87, § 39, 23 DCR 2544; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-124. 1973 Ed., § 41-324.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-425. Partner's interest in partnership — Profits and surplus. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 641, Pub. L. 87-709, § 26; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-125. 1973 Ed., § 41-325.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-426. Partner's interest in partnership — Effect of assignment on partnership; rights of assignee. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 641, Pub. L. 87-709, § 27; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-126. 1973 Ed., § 41-326.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-427. Partner's interest in partnership — Charging order; appointment of receiver; redemption of interest charged. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 641, Pub. L. 87-709, § 28; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-127. 1973 Ed., § 41-327.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-428. "Dissolution" defined. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 642, Pub. L. 87-709, § 29; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-128. 1973 Ed., § 41-328.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-429. Dissolution — No termination of partnership. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 642, Pub. L. 87-709, § 30; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-129. 1973 Ed., § 41-329.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-430. Dissolution — Causes. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 642, Pub. L. 87-709, § 31; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-130. 1973 Ed., § 41-330.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-431. Dissolution — Decree of court. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 642, Pub. L. 87-709, § 32; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-131. 1973 Ed., § 41-331.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-432. Dissolution — Effect on authority of partner. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 643, Pub. L. 87-709, § 33; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-132. 1973 Ed., § 41-332.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-433. Dissolution — Right of partner to contribution from copartners [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 643, Pub. L. 87-709, § 34; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-133. 1973 Ed., § 41-333.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-434. Dissolution — Power of partner to bind partnership; liability of partner. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 643, Pub. L. 87-709, § 35; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-134. 1973 Ed., § 41-334.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-435. Dissolution — Effect on partner's existing liability; discharge of liability. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 644, Pub. L. 87-709, § 36; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-135. 1973 Ed., § 41-335.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-436. Dissolution — Right to wind up. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 644, Pub. L. 87-709, § 37; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-136. 1973 Ed., § 41-336.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-437. Dissolution — Right of partners to application of partnership property. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 644, Pub. L. 87-709, § 38; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-137. 1973 Ed., § 41-337.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-438. Dissolution — Fraud or misrepresentation; rights of partner. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 645, Pub. L. 87-709, § 39; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-138. 1973 Ed., § 41-338.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-439. Dissolution — Order of distribution of assets; liabilities; contribution of partners to satisfy liabilities; rights of assignees; partner's right to enforce contributions; distribution of claims against separate property. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 646, Pub. L. 87-709, § 40; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-139. 1973 Ed., § 41-339.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-440. Continuing partnership business — Liability of partners in certain cases; rights of creditors. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 646, Pub. L. 87-709, § 41; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-140. 1973 Ed., § 41-340.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-441. Continuing partnership business — Rights of retiring or estate of deceased partner. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 647, Pub. L. 87-709, § 42; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-141. 1973 Ed., § 41-341.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-442. Accrual of right to account. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 648, Pub. L. 87-709, § 43; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-142. 1973 Ed., § 41-342.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-443. Registered limited liability partnerships. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 648, Pub. L. 87-709, § 44, as added by Oct. 15, 1993, D.C. Law 10-34, § 2(b), 40 DCR 5764; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-143.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-444. Name of registered limited liability partnerships. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 648, Pub. L. 87-709, § 45, as added by Oct. 15, 1993, D.C. Law 10-34, § 2(b), 40 DCR 5764; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-144.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-445. Insurance requirement for registered limited liability partnerships. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 648, Pub. L. 87-709, § 46, as added by Oct. 15, 1993, D.C. Law 10-34, § 2(b), 40 DCR 5764; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-145.

Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-446. Nature of partners' liability in registered limited liability partnerships. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 648, Pub. L. 87-709, § 47, as added by Oct. 15, 1993, D.C. Law 10-34, § 2(b), 40 DCR 5764; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-146.
Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-447. Foreign registered limited liability partnerships. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 648, Pub. L. 87-709, § 48, as added by Oct. 15, 1993, D.C. Law 10-34, § 2(b), 40 DCR 5764; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-147.
Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

§ 33-448. Applicability of chapter to foreign and interstate commerce. [Repealed].

Repealed.

(Sept. 27, 1962, 76 Stat. 648, Pub. L. 87-709, § 49, as added by Oct. 15, 1993, D.C. Law 10-34, § 2(b), 40 DCR 5764; Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.)

Prior Codifications. — 1981 Ed., § 41-148.
Legislative history of Law 11-234. — For Law 11-234, see notes following § 33-401.

CHAPTER 5. UNIFORM LIMITED PARTNERSHIP ACT (1962). [REPEALED].

Sec.
33-501 to 33-529. [Repealed].

§ 33-501. "Limited partnership" defined. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 655, Pub. L. 87-716, § 1; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-201. 1973 Ed., § 41-401.

Legislative history of Law 7-49. — Law 7-49 was introduced in Council and assigned Bill No. 7-227, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 14, 1987 and September 29, 1987, respectively. Signed by the Mayor on October 16, 1987, it was assigned Act No. 7-82 and transmitted to both Houses of Congress for its review.

§ 33-502. Procedure for formation; filing and recordation of certificate. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 655, Pub. L. 87-716, § 2; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-202. 1973 Ed., § 41-402.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-503. Business which may be carried on. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 656, Pub. L. 87-716, § 3; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-203. 1973 Ed., § 41-403.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-504. Character of limited partner's contribution. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 656, Pub. L. 87-716, § 4; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-204. 1973 Ed., § 41-404.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-505. Liability — Restriction on partnership name. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 656, Pub. L. 87-716, § 5; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-205. 1973 Ed., § 41-405.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-506. Liability — False statements in certificate. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 656, Pub. L. 87-716, § 6; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-206. 1973 Ed., § 41-406.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-507. Liability of limited partner to creditors. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 656, Pub. L. 87-716, § 7; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-207. 1973 Ed., § 41-407.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-508. Admission of additional limited partners. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 656, Pub. L. 87-716, § 8; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-208. 1973 Ed., § 41-408.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-509. Rights, powers, and liabilities of a general partner. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 656, Pub. L. 87-716, § 9; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-209. 1973 Ed., § 41-409.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-510. Rights of limited partner. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 657, Pub. L. 87-716, § 10; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-210. 1973 Ed., § 41-410.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-511. Status of a person erroneously believing himself a limited partner. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 657, Pub. L. 87-716, § 11; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-211. 1973 Ed., § 41-411.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-512. One as both general and limited partner. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 657, Pub. L. 87-716, § 12; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-212. 1973 Ed., § 41-412.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-513. Loans and other business transactions with limited partner. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 657, Pub. L. 87-716, § 13; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-213. 1973 Ed., § 41-413.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-514. Relation of limited partners inter se. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 658, Pub. L. 87-716, § 14; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-214. 1973 Ed., § 41-414.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-515. Compensation of limited partner. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 658, Pub. L. 87-716, § 15; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-215. 1973 Ed., § 41-415.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-516. Withdrawal or reduction of limited partner's contribution; limited partner's right to dissolve partnership. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 658, Pub. L. 87-716, § 16; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-216. 1973 Ed., § 41-416.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-517. Liability of limited partner to partnership; waiver of liabilities. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 658, Pub. L. 87-716, § 17; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-217. 1973 Ed., § 41-417.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-518. Nature of limited partner's interest in partnership. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 659, Pub. L. 87-716, § 18; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-218. 1973 Ed., § 41-418.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-519. Assignment of limited partner's interest; rights of assignee; rights, powers, restrictions or substituted limited partner. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 659, Pub. L. 87-716, § 19; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-219. 1973 Ed., § 41-419.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-520. Effect of retirement, death, or insanity of a general partner. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 659, Pub. L. 87-716, § 20; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-220. 1973 Ed., § 41-420.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-521. Death of a limited partner; liabilities. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 660, Pub. L. 87-716, § 21; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-221. 1973 Ed., § 41-421.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-522. Rights of creditors of limited partner. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 660, Pub. L. 87-716, § 22; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-222. 1973 Ed., § 41-422.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-523. Order of distribution of assets. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 660, Pub. L. 87-716, § 23; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-223. 1973 Ed., § 41-423.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-524. Cancellation or amendment of certificate. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 660, Pub. L. 87-716, § 24; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-224. 1973 Ed., § 41-424.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-525. Requirements for amendment and for cancellation of certificate. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 661, Pub. L. 87-716, § 25; July 29, 1970, 84 Stat. 589, Pub. L. 91-358, title I, § 168(h); Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-225. 1973 Ed., § 41-425.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-526. Parties to action. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 661, Pub. L. 87-716, § 26; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-226. 1973 Ed., § 41-426.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-527. Rules of construction. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 662, Pub. L. 87-716, § 28; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-227. 1973 Ed., § 41-427.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-528. Rules for cases not provided for in this chapter. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 662, Pub. L. 87-716, § 29; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-228. 1973 Ed., § 41-428.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

§ 33-529. Provisions for existing limited partnerships. [Repealed].

Repealed.

(Sept. 28, 1962, 76 Stat. 662, Pub. L. 87-716, § 30; Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.)

Prior Codifications. — 1981 Ed., § 41-229. 1973 Ed., § 41-429.

Legislative history of Law 7-49. — For Law 7-49, see notes following § 33-501.

TITLE 34. PUBLIC UTILITIES.

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1. Applicability of Subtitle.
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SUBTITLE I. APPLICABLE PROVISIONS GENERALLY.

CHAPTER 1. APPLICABILITY OF SUBTITLE.

Sec.
34-101. Applicability of this subtitle.
Sec.
34-102. Corporations subject to this subtitle.

§ 34-101. Applicability of this subtitle.

This subtitle shall apply to the transportation of passengers, freight, or property from 1 point to another within the District of Columbia, and any common carrier performing such service; and this subtitle shall be so applicable and be so construed as to be free from conflict with those provisions of the Constitution of the United States and the laws in pursuance thereof relating to interstate commerce.

(Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 1.)

Prior Codifications. — 1981 Ed., § 43-222. 1973 Ed., § 43-122.

CASE NOTES

In general.

Taxicab company is a common carrier within Act March 4, 1913, § 8 (37 Stat. 938), and subject to jurisdiction of Public Utilities Commission of District of Columbia, as to its exercise of exclusive rights under lease from owner of Washington Union Railway station in soliciting taxicab business, but not as to business of furnishing automobiles from its central garage on individual orders. Terminal Taxicab Co. v. Kutz, 36 S.Ct. 583, 1916 U.S. LEXIS 1750 (U.S.Dist.Col. 1916).

Business of operator of single passenger automobile for hire held not "public utility," subject to orders of commission. Act March 4, 1913, § 8, par. 2, D.C. Code, 1929, T. 26, § 24. Bell v. Harlan, 20 F.2d 271, 1927 U.S. App. LEXIS 2495 (1927).

§ 34-102. Corporations subject to this subtitle.

Corporations formed to acquire property or to transact business which would be subject to the provisions of this subtitle, and corporations possessing franchises for any of the purposes contemplated by this subtitle shall be deemed to be subject to the provisions of this subtitle, although no property may have been acquired, business transacted, or franchises exercised.

(Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 1.)

Cross references. — Highway plans, "utility" defined, see § 9-107.02.

Prior Codifications. — 1981 Ed., § 43-223. 1973 Ed., § 43-123.

CHAPTER 2. DEFINITIONS APPLICABLE TO SUBTITLE.

Sec.
34-201. "Commission" defined.
34-202. "Commissioner" defined.
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34-206. "Electric plant" defined.
34-207. "Electrical company" defined.
34-208. "Extension or extensions" defined.
34-209. "Gas company" defined.
34-210. "Gas plant" defined.
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34-213. "Pipeline company" defined.
34-214. "Public utility", "utility" or "utility company" defined.
34-215. "Service" defined.
34-216. "Street railroad" defined.
34-217. "Street railroad corporation" defined.
34-218. "Telegraph corporation" defined.
34-219. "Telegraph line" defined.
34-220. "Telephone corporation" defined.
34-221. "Telephone line" defined.
34-222. [Repealed].

§ 34-201. "Commission" defined.

For the purpose of this subtitle the term "Commission" or "Public Service Commission" when used herein shall mean the Public Service Commission of the District of Columbia or any successor Commission, which shall include any regulatory or other body that possesses or exercises the same or similar powers, functions, duties, and obligations exercised or possessed by the Commission on May 9, 2000.

(Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; May 9, 2000, D.C. Law 13-107, § 201(b)(1), 47 DCR 1091.)

Prior Codifications. — 1981 Ed., § 43-201. 1973 Ed., § 43-101.

Effect of amendments. — D.C. Law 13-107 inserted "or 'Public Service Commission'" following "Commission" and substituted the concluding language for "created by this section."

Legislative history of Law 13-107. — Law 13-107, the "Retail Electric Competition and Consumer Protection Act of 1999," was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

§ 34-202. "Commissioner" defined.

The term "Commissioner" when used in Chapters 1-11 of this title and Chapter 33 of Title 42 shall mean one of the members of such Commission.

(Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

Prior Codifications. — 1981 Ed., § 43-202. 1973 Ed., § 43-102.

§ 34-203. "Common carrier" defined.

The term "common carrier" when used in this subtitle includes express companies and every corporation, street railroad corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any agency or agencies for public use for

the conveyance of persons or property within the District of Columbia for hire. Taxicabs, and all other passenger vehicles for hire, steam railroads, express companies subject to the jurisdiction of the Interstate Commerce Commission, the Washington Terminal Company, and the Norfolk and Washington Steamboat Company, and all companies engaged in interstate traffic upon the Potomac River and Chesapeake Bay and the Washington and Old Dominion Railway, excepting as to the regulation of its operation inside of the District of Columbia, and the Washington-Virginia Railway Company, excepting as to the regulation of its operation inside of the District of Columbia, are excluded from the operation of this subtitle, and are not included in the term "common carrier."

(Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1; Feb. 25, 1916, 39 Stat. 13, ch. 34; Aug. 21, 1916, 39 Stat. 521, ch. 367; Aug. 26, 1916, 39 Stat. 536, ch. 412; Mar. 25, 1986, D.C. Law 6-97, § 21(b), 33 DCR 703.)

Prior Codifications. — 1981 Ed., § 43-211. 1973 Ed., § 43-111.

Legislative history of Law 6-97. — Law 6-97 was introduced in Council and assigned Bill No. 6-159, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on December 17, 1985, and January 14, 1986, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-125 and transmitted to both Houses of Congress for its review.

Effective date. — Section 24(b) of D.C. Law 6-97 provided that §§ 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

CASE NOTES

In general.

Taxicab company is a common carrier within Act March 4, 1913, § 8 (37 Stat. 938), and subject to jurisdiction of Public Utilities Commission of District of Columbia, as to its exercise of exclusive rights under lease from owner of Washington Union Railway station in soliciting taxicab business, but not as to business of furnishing automobiles from its central garage on individual orders. Terminal Taxicab Co. v. Kutz, 36 S.Ct. 583, 1916 U.S. LEXIS 1750 (U.S.Dist.Col. 1916).

Under statute providing that term "common carrier" includes every person owning, operating, controlling, or managing any agencies for public use for conveyance of persons or property within the District of Columbia for hire, any person who owns such facilities, regardless of whether he personally operates them, is a "common carrier" subject to regulation by Public Utilities Commission of the District. D.C. Code 1940, § 43-111. In re Rice, 165 F.2d 617, 1947 U.S. App. LEXIS 3260 (1947).

§ 34-204. "Corporation" defined.

The term "corporation" when used in this subtitle includes a corporation, company, association, and joint-stock company or association.

(Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

Prior Codifications. — 1981 Ed., § 43-205. 1973 Ed., § 43-105.

§ 34-205. "Electric generating facility" defined.

The term "electric generating facility" when used in this subtitle means all buildings, easements, real estate, mains, pipes, conduits, fixtures, meters, wires, poles, lamps, devices, and materials of any kind operated, owned, used, or to be used by a person for the generation of electricity. The term includes all

buildings, easements, real estate, mains, pipes, conduits, fixtures, meters, wires, poles, lamps, devices, and materials of any kind operated, owned, used, or to be used by a person for cogeneration of electricity.

(Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1, as added May 9, 2000, D.C. Law 13-107, § 201(b)(7), 47 DCR 1091.)

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-201.

§ 34-206. "Electric plant" defined.

The term "electric plant" when used in this subtitle means the material, equipment, and property owned and used, or to be used, by the electric company for or in connection with the transmission or distribution of electricity in the District of Columbia to a retail electric customer.

(Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1; May 9, 2000, D.C. Law 13-107, § 201(b)(4), 47 DCR 1091.)

Cross references. — Public utility environmental impact statement, "action" defined, see § 34-

Prior Codifications. — 1981 Ed., § 43-214. 1973 Ed., § 43-114.

Effect of amendments. — D.C. Law 13-107 rewrote this section which formerly provided: "The term 'electric plant' when used in Chapters 1-10 of this title includes all engines, boilers, dynamos, generators, storage batteries, converters, motors, transformers, cables, wires, poles, lamps, meters, easements, real estate, fixtures, and personal property, materials, apparatus, and devices of every kind operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale, or furnishing of electricity for light, heat, or power, and any conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying electrical conductors used or to be used wholly or in part for the transmission of electricity for light, heat, or power, except where electricity is made, generated, produced, or transmitted by a private person or private corporation on or through private property solely for its own use or the use of tenants of its building and not for sale to or for the use of others."

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-201.

§ 34-207. "Electrical company" defined.

The term "electric company" when used in this subtitle includes every corporation, company, association, joint-stock company or association, partnership, or person and doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, physically transmitting or distributing electricity in the District of Columbia to retail electric customers. The term excludes any building owner, lessee, or manager who, respectively, owns, leases, or manages, the internal distribution system serving the building and who supplies electricity and other related electricity services solely to occupants of the building for use by the occupants.

(Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1; May 9, 2000, D.C. Law 13-107, § 201(b)(5), 47 DCR 1091.)

Section references. — This section is referred to in §§ 8-1771.06, 8-1773.01, 9-107.02, and 34-1561.

Prior Codifications. — 1981 Ed., § 43-215. 1973 Ed., § 43-115.

Effect of amendments. — D.C. Law 13-107 rewrote this section which formerly provided: "The term 'electrical corporation' when used in

Chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any electric plant, including any water plant, or water property, or water falls, or dam, or waterpower stations, except where electricity is made, generated, produced, or transmitted by a private person or private corporation on or through private property solely for its own use or the use of tenants of its building and not for sale to or for the use of others."

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-201.

§ 34-208. "Extension or extensions" defined.

The term "extension or extensions" when used in this subtitle shall include the reasonable extension of the service and facilities of every street railroad, street railroad corporation, gas plant, gas company, electric plant, electrical corporation, telephone corporation, telephone line, telegraph line, and telegraph corporation as the same are defined in this subtitle.

(Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; Mar. 16, 2005, D.C. Law 15-227, § 17(a)(2), 51 DCR 10549.)

Prior Codifications. — 1981 Ed., § 43-208. 1973 Ed., § 43-108.

Effect of amendments. — D.C. Law 15-227 substituted "gas company" for "gas corporation".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(b) of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Temporary Act of 2001 (D.C. Law 14-13, July 10, 2001, law notification 48 DCR 6589).

Legislative history of Law 15-227. — Law 15-227, the "Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004", was introduced in Council and assigned Bill No. 15-679, and was retained by Council. The Bill was adopted on first and second readings on July 13, 2004, and October 5, 2004, respectively. Signed by the Mayor on November 1, 2004, it was assigned Act No. 15-567 and transmitted to both Houses of Congress for its review. D.C. Law 15-227 became effective on March 16, 2005.

§ 34-209. "Gas company" defined.

The term "gas company" when used in this subtitle includes every corporation, company, association, joint-stock company or association, partnership, or person manufacturing, making, distributing, or selling gas for light, heat, or power, or for any public use whatsoever in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, and in said district selling, physically transmitting, or distributing natural gas in the District of Columbia to retail natural gas customers. The term excludes any building owner, lessee, or manager who, respectively, owns, leases, or manages, the internal distribution system serving the building and who supplies natural gas and other related natural gas services solely to occupants of the building for use by the occupants.

(Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1; Mar. 16, 2005, D.C. Law 15-227, § 17(a)(3), 51 DCR 10549; Mar. 2, 2007, D.C. Law 16-191, § 58(a), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 43-213. 1973 Ed., § 43-113.

Effect of amendments. — D.C. Law 15-227 rewrote the section which had read:

"The term 'gas corporation' when used in this subtitle includes every corporation, company, association, joint-stock company or association, partnership, or person manufacturing, making, distributing, or selling gas for light, heat, or power, or for any public use whatsoever in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, and in said district owning, operating, controlling, or managing any gas plant, except where the gas is made or produced and distributed by the maker on or through private property solely for its own use or the use of its tenants and not for sale to or for the use of others."

D.C. Law 16-191 made a change in the directory language of D.C. Law 15-227 which resulted in no change in text.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Temporary Act of 2001 (D.C. Law 14-13, July 10, 2001, law notification 48 DCR 6589).

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-208.

Legislative history of Law 16-191. — Law 16-191, the "Technical Amendments Act of 2006", was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

§ 34-210. "Gas plant" defined.

The term "gas plant" when used in this subtitle means the material, equipment, and property owned and used, or to be used, by the gas company for or in connection with the transmission or distribution of natural gas in the District of Columbia to a retail natural gas customer.

(Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1; Mar. 16, 2005, D.C. Law 15-227, § 17(a)(4), 51 DCR 10549.)

Section references. — This section is referred to in § 9-107.02.

Prior Codifications. — 1981 Ed., § 43-212. 1973 Ed., § 43-112.

Effect of amendments. — D.C. Law 15-227 rewrote the section which had read:

"The term 'gas plant' when used in this subtitle includes all buildings, easements, real estate, mains, pipes, conduits, service pipes, services, pipe galleries, meters, boilers, water-gas sets, retorts, fixtures, condensers, scrubbers, purifiers, holders, materials, apparatus, personal property, and franchises, and property of every kind used in the conduct of the business operated, owned, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale, or furnishing of gas (natural or manufactured) for light, heat, or power."

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-208.

§ 34-211. "Joint rates" defined.

The term "joint rates" when used in this subtitle with reference to street railways shall be taken to mean rates between unrelated lines in effect on March 4, 1913, under then existing law or under contract, or which may thereafter be specifically authorized by law.

(Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

Prior Codifications. — 1981 Ed., § 43-207. 1973 Ed., § 43-107.

§ 34-212. "Person" defined.

The word "person" when used in this subtitle means every individual, corporation, company, association, joint-stock company, association, firm, partnership, or other entity.

(Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; May 9, 2000, D.C. Law 13-107, § 201(b)(3), 47 DCR 1091.)

Prior Codifications. — 1981 Ed., § 43-206. 1973 Ed., § 43-106.

Effect of amendments. — D.C. Law 13-107 rewrote this section which formerly provided: "The word 'person' when used in Chapters 1-10 of this title includes an individual and a firm or copartnership."

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-201.

§ 34-213. "Pipeline company" defined.

The term "pipeline company" when used in this subtitle includes every corporation, company, association, joint-stock company or association, partnership, or person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, managing, or controlling the supply of any liquid, steam, or air through pipes or tubing to consumers for use or for lighting, heating, or cooling purposes, or for power.

(Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

Prior Codifications. — 1981 Ed., § 43-221. 1973 Ed., § 43-121.

CASE NOTES

In general.

Coverage under the Public Utilities Act was sufficiently broad to encompass furnishing of steam and chilled water services pursuant to contract between utility and association representing hotel-office-apartment buildings complex since the consumers, i.e., tenants of the complex, received their heating and cooling needs from a third party, i.e., the utility, which was neither their landlord nor their cooperative management group and utility not only distributed but also manufactured the subject steam and chilled water and utility had joined with the association in actively seeking Commission regulation of such service area in the first instance. D.C. Code §§ 43-103, 43-121. Watergate Improv. Associates v. Public Service Com., 326 A.2d 778, 1974 D.C. App. LEXIS 275 (1974).

§ 34-214. "Public utility", "utility" or "utility company" defined.

The term "public utility", "utility" or "utility company" as used in this subtitle shall mean and embrace every street railroad, street railroad corporation, common carrier, gas plant, gas company, electric company, telephone corporation, telephone line, telegraph corporation, telegraph line, and pipeline company. Until the initial implementation date of Chapter 15 of this title, the term shall also include every electric generating facility owned and operated by the electric company.

(Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; May 9, 2000, D.C. Law 13-107, § 201(b)(2), 47 DCR 1091; Mar. 16, 2005, D.C. Law 15-227, § 17(a)(1), 51 DCR 10549.)

Prior Codifications. — 1981 Ed., § 43-203. 1973 Ed., § 43-103.

Effect of amendments. — D.C. Law 15-227 substituted "gas company" for "gas corporation".

D.C. Law 13-107 inserted following "The

term 'public utility' " the words "or 'utility' or 'utility company' ".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(a) of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Temporary Act of 2001 (D.C. Law 14-13, July 10, 2001, law notification 48 DCR 6589).

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-201.

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-208.

CASE NOTES

ANALYSIS

In general.
Jurisdiction.

In general.

Business of operator of single passenger automobile for hire held not "public utility," subject to orders of commission. Act March 4, 1913, § 8, par. 2, D.C. Code, 1929, T. 26, § 24. Bell v. Harlan, 20 F.2d 271, 1927 U.S. App. LEXIS 2495 (1927).

Coverage under the Public Utilities Act was sufficiently broad to encompass furnishing of steam and chilled water services pursuant to contract between utility and association representing hotel-office-apartment buildings complex since the consumers, i.e., tenants of the complex, received their heating and cooling needs from a third party, i.e., the utility, which was neither their landlord nor their cooperative management group and utility not only distributed but also manufactured the subject steam and chilled water and utility had joined with the association in actively seeking Commission regulation of such service area in the first instance. D.C. Code §§ 43-103, 43-121. Watergate Improv. Associates v. Public Service Com., 326 A.2d 778, 1974 D.C. App. LEXIS 275 (1974).

Jurisdiction.

Superior court had jurisdiction over conservator's complaint alleging that his ward had been unjustifiably inveigled into a telephone equipment purchase agreement, that his existing telephone service was impermissibly disconnected when ward failed to make payment under agreement, and that telephone company required payment in full as a precondition to reconnection of telephone service; neither Public Service Commission's (PSC) broad statutory mandate nor its regulations required filing of basic consumer complaints with PSC. Perlman v. Verizon Communications, Inc., 134 WLR 883 (, (Super. Ct. 2006).).

§ 34-215. "Service" defined.

The term "service" is used in this subtitle in its broadest and most inclusive sense.

(Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

Prior Codifications. — 1981 Ed., § 43-204. 1973 Ed., § 43-104.

CASE NOTES

ANALYSIS

In general.
Steam and chilled water services.
Telecommunications.

In general.

Under the Act of Congress applicable to the District of Columbia requiring public utilities to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable, the term "service" is used in its broadest and most inclusive sense. D.C. Code 1940, §§ 43-104, 43-301. Pollak v. Public Utilities Commission of District of Columbia, 191 F.2d 450, 1951 U.S. App. LEXIS 3457 (C.A.D.C. 1951).

Public Service Commission had authority to direct public gas utility to keep particular customer service center open so as to make it easier for customers to pay gas bills; statutes granted commission authority to investigate public utility services, including "time and conditions of payment," which were "in any respect unreasonable or unjustly discriminatory," and stated that the Commission may investigate if it believes "any reasonable service is not supplied by a public utility." Wash. Gas Light Co. v. D.C. PSC, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

Steam and chilled water services.

Coverage under the Public Utilities Act was sufficiently broad to encompass furnishing of

steam and chilled water services pursuant to contract between utility and association representing hotel-office-apartment buildings complex since the consumers, i.e., tenants of the complex, received their heating and cooling needs from a third party, i.e., the utility, which was neither their landlord nor their cooperative management group and utility not only distributed but also manufactured the subject steam and chilled water and utility had joined with the association in actively seeking Commission regulation of such service area in the first instance. D.C. Code §§ 43-103, 43-121. Watergate Improv. Associates v. Public Service Com., 326 A.2d 778, 1974 D.C. App. LEXIS 275 (1974).

Telecommunications.

"Yellow Pages" advertising was not a public utility "service" or "facility" within statute providing that every public utility doing business within the District of Columbia is required to furnish service and facilities in all respects just and reasonable, and hence the public service commission lacked jurisdiction to regulate rates and practices of telephone company with respect to its yellow pages classified telephone directory. D.C. Code 1961, §§ 43-301, 43-303. Classified Directory Subscribers Asso. v. Public Service Com., 383 F.2d 510, 1967 U.S. App. LEXIS 5125 (C.A.D.C. 1967).

Advertising published in the classified telephone directory did not constitute a "service" so that the Public Service Commission did not have statutory jurisdiction to regulate the rates charged for advertising in the classified directory. D.C. Code 1961, §§ 43-104, 43-204, 43-414, 43-705, 43-706, 43-1003. Classified Directory Subscribers Asso. v. Public Service Com., 274 F. Supp. 261, 1966 U.S. Dist. LEXIS 9558 (D.D.C1966), affirmed by 383 F.2d 510, 127 U.S. App. D.C. 315, 1967 U.S. App. LEXIS 5125 (1967).

§ 34-216. "Street railroad" defined.

The term "street railroad" when used in this subtitle includes every such railroad, whether wholly or partly in the District of Columbia, by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for compensation, and includes all equipment, construction, maintenance, repairs, switches, spurs, tracks, terminals, terminal facilities of every kind, trackage, joint or reciprocal trackage, transfers of passengers between street railways having connecting lines and street railways having independent lines, subways, tunnels, and stations, used, operated, or owned by or in connection with any such street railroad, and all the property of the same used in the conduct of its business.

(Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

Prior Codifications. — 1981 Ed., § 43-209. 1973 Ed., § 43-109.

§ 34-217. "Street railroad corporation" defined.

The term "street railroad corporation" when used in this subtitle includes every corporation, company, association, joint-stock company or association, partnership, and person doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any street railroad or any cars or other equipment used thereon or in connection therewith.

(Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

Prior Codifications. — 1981 Ed., § 43-210. 1973 Ed., § 43-110.

§ 34-218. "Telegraph corporation" defined.

The term "telegraph corporation" when used in this subtitle includes every

corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any plant, wires, poles, or property for the purposes of communication, or of transmitting or receiving messages by telegraph, or by any telegraphic apparatus or instrument, or any telegraph line or part of telegraph line used in the conduct of the business of affording for hire, communication by telegraph, or which licenses, lets, or permits telegraphic communication for hire.

(Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

Prior Codifications. — 1981 Ed., § 43-219. 1973 Ed., § 43-119.

§ 34-219. "Telegraph line" defined.

The term "telegraph line" when used in this subtitle includes conduits, ducts, poles, wires, cables, crossarms, instruments, machinery, appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, and routes used, operated, controlled, or owned by any telegraph corporation to facilitate the business of affording communication by telegraph for hire.

(Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

Prior Codifications. — 1981 Ed., § 43-220. 1973 Ed., § 43-120.

§ 34-220. "Telephone corporation" defined.

The term "telephone corporation" when used in this subtitle includes every corporation, company, association, joint-stock company or association, partnership, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any plant, wires, poles for the reception, transmission, or communication of messages by telephone, telephonic apparatus or instruments, or any telephone line or part of telephone line, used in the conduct of the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication for hire.

(Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

Prior Codifications. — 1981 Ed., § 43-217. 1973 Ed., § 43-117.

§ 34-221. "Telephone line" defined.

The term "telephone line" when used in this subtitle includes conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, and appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, appurtenances, and routes used, operated, controlled, or owned by any telephone corporation to facilitate the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication.

(Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

Cross references. — Public utility environmental impact statement, "action" defined, see § 34-2602.

Prior Codifications. — 1981 Ed., § 43-218. 1973 Ed., § 43-118.

§ 34-222. "Waterpower company" defined. [Repealed].

Repealed.

(Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1; May 9, 2000, D.C. Law 13-107, § 201(b)(6), 47 DCR 1091.)

Cross references. — Failure to obey Commission, penalties, see §§ 34-706 to 34-708.

General provisions, construction and severability of law, see § 34-403.

Separability clauses, see §§ 34-405 and 34-406.

Prior Codifications. — 1981 Ed., § 43-216. 1973 Ed., § 43-116.

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-201.

CHAPTER 3. GAS AND ELECTRIC CORPORATIONS.

Sec.
34-301. Public Service Commission; general powers.
34-302. Approval of construction of gas or electric plant.
34-302.01. Rule for purchases of distribution transformers.
34-303. Inspectors of gas and electric meters; inspection of meters; Commission to make rules and regulations.
34-304. Excessive charges a complete defense in suit to collect for gas or electricity furnished.
34-305. Appointment and removal of inspectors and assistant inspectors of gas and meters.
34-306. Inspector of Gas and Meters to transfer books to Commission.

§ 34-301. Public Service Commission; general powers.

The Commission shall, within its jurisdiction:

(1) Have general supervision of all gas companies and electrical companies having authority under any general or special law or under any charter or franchise to lay down, erect, or maintain wires, pipes, conduits, ducts, or other fixtures in, over, or under the streets, highways, and public places in the District of Columbia for the purpose of furnishing or distributing gas or of furnishing or transmitting electricity for light, heat, or power, or maintaining underground conduits or ducts for electrical conductors, and all gas plants and electric plants owned, leased, or operated by any person.

(2) Investigate and ascertain, from time to time, the quality and quantity of gas supplied by persons or corporations; examine or investigate the methods employed by such persons and corporations in manufacturing, distributing, and supplying gas and in transmitting or distributing electricity for light, heat, or power, and in transmitting the same, and have power to order such with respect to manufacturing, distributing, or supplying such gas, or with respect to transmitting or distributing such electricity as will reasonably promote the public interest, preserve the public health, and protect those using such gas or electricity and those employed in the manufacture and distribution of gas or the transmission or distribution of electricity or in the manufacture and operation of the works, wires, poles, lines, conduits, ducts, and systems connected therewith, and have power to order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts, and other reasonable devices, apparatus, and property of gas companies and electric companies.

(3) Have power by order to fix from time to time standards for determining the purity or the measurement of the illuminating power of gas to be manufactured, distributed, or sold by persons or corporations for lighting, heating, or power purposes, and to prescribe from time to time the efficiency of the electric transmission or distribution system, and by order to require the gas so manufactured, distributed, or sold to equal the standards so fixed by it, and to prescribe from time to time the reasonable minimum and maximum pressure at which gas shall be delivered by said persons or corporations. For the purpose of determining whether the gas manufactured, distributed, or sold by such persons or corporations for lighting, heating, or power purposes conforms to the standards of illuminating power, purity, and pressure, and for the purpose of determining whether the efficiency of the electric transmission

or distribution system conforms to the orders issued by the Commission, the Commission shall have power, of its own motion, to examine and investigate the plants and methods employed in manufacturing, delivering, and supplying gas or transmitting or distributing electricity, and shall have access, through it members or persons employed and authorized by it to make such examinations and investigations, to all parts of the manufacturing plants owned, used, or operated for the manufacture, transmission, or distribution of gas or the transmission or distribution of electricity by any such person or corporation. Any employee or agent of the Commission who divulges any fact or information which may come to his knowledge during the course of any such inspection or examination, except insofar as he may be directed by the Commission, or by a court or judge thereof, or authorized by law, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $50 nor more than $500 for each offense.

(Mar. 4, 1913, 37 Stat. 986, ch. 150, § 8, par. 55; May 9, 2000, D.C. Law 13-107, § 201(k), 47 DCR 1091; Mar. 16, 2005, D.C. Law 15-227, § 17(b), 51 DCR 10549.)

Cross references. — Appliance testing, Commission to establish fees, see § 34-1121.

Measurement standards, rules and regulations, § 34-1120.

Penal provision, recovery on rights, penalties and forfeitures, see § 34-711.

Penal provisions, deposits from fines and penalties, see § 34-710.

Public utility accidents, reporting and investigations, see § 34-401.

Prior Codifications. — 1981 Ed., § 43-1001.

1973 Ed., § 43-601.

Effect of amendments. — D.C. Law 13-107 rewrote the section.

D.C. Law 15-227, in pars. (1) and (2), substituted "gas companies" for "gas corporations".

Legislative history of Law 13-107. — Law 13-107, the "Retail Electric Competition and Consumer Protection Act of 1999," was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-208.

CASE NOTES

In general.

Public Service Commission, not the Court of Appeals, has responsibility for setting utility rates and establishing rate designs; in doing so, however, it must arrive at a fair balance between competing consumer and investor interests. D.C. Code 1981, §§ 43-501, 43-601, 43-611, 47-2501. Washington Metropolitan Area Transit Authority v. Public Service Com., 486 A.2d 682, 1984 D.C. App. LEXIS 583 (1984).

Public Service Commission, not the Court of Appeals, has the sole responsibility for balancing consumer and investor interests in designing rate structures and approving specific charges. D.C. Code 1981, §§ 43-501, 43-601, 43-611. Potomac Elec. Power Co. v. Public Service Com'n of Dist. of Columbia, 457 A.2d 776, 1983 D.C. App. LEXIS 325 (1983).

§ 34-302. Approval of construction of gas or electric plant.

No person shall begin the construction of a gas plant or an electric plant without first having obtained the permission and approval of the Commission.

(Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 56; May 9, 2000, D.C. Law 13-107, § 201(l), 47 DCR 1091.)

Prior Codifications. — 1981 Ed., § 43-1002.

1973 Ed., § 43-602.

Effect of amendments. — D.C. Law 13-107 rewrote the section which formerly provided: "No gas corporation or electrical corporation shall begin the construction of a gas plant or electric plant without first having obtained the permission and approval of the Commission."

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-301.

CASE NOTES

In general.

Apparent acquiescence of the Public Service Commission (PSC) in electric company's failure to obtain PSC approval in advance of construction of combustion turbines, even if such approval was statutorily required, did not rise to the level of prejudicial error, given the PSC's thorough examination of the reasonableness of the construction of the turbines and its examination of the reasonableness of electric company's cost recovery for the turbines in rate case. D.C. Code 1981, §§ 1-1510(b), 43-1002. Office of People's Counsel v. Public Service Com., 610 A.2d 240, 1992 D.C. App. LEXIS 155 (1992).

Statement, in natural gas rate order, that since utility's estimates were the best available in the record the Public Service Commission accepted utility's four-year construction budget as not being unreasonable was not to be read as placing burden of production or persuasion on consumer advocate as regards proof of reasonableness of the budget. D.C. Code 1981, §§ 43-516, 43-1002. Office of People's Counsel v. Public Service Com., 482 A.2d 404, 1984 D.C. App. LEXIS 507 (1984).

§ 34-302.01. Rule for purchases of distribution transformers.

The Commission shall adopt a rule in accordance with § 8-1771.06.

(Mar. 4, 1913, ch. 50, § 8, par. 56A, as added Dec. 11, 2007, D.C. Law 17-64, § 8, 54 DCR 10964.)

Legislative history of Law 17-64. — Law 17-64, the "Energy Efficiency Standards Act of 2007", was introduced in Council and assigned Bill No. 17-211 which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 10, 2007, and October 2, 2007, respectively. Signed by the Mayor on October 19, 2007, it was assigned Act No. 17-165 and transmitted to both Houses of Congress for its review. D.C. Law 17-64 became effective on December 11, 2007.

§ 34-303. Inspectors of gas and electric meters; inspection of meters; Commission to make rules and regulations.

(a) The Commission shall appoint inspectors of gas meters, whose duty it shall be, when required by the Commission, to inspect, examine, and ascertain the accuracy of gas meters used or intended to be used for measuring and ascertaining the quantity of gas furnished for light, heat, or power by any person or corporation to or for the use of any person or corporation.

(b) No corporation or person shall furnish, set, or put in use any gas meter which shall not have been inspected and proved for accuracy, or any meter the type of which shall not have been approved by the Commission or by an inspector of the Commission.

(c) The Commission shall appoint inspectors of electric meters, whose duty it shall be, when required by the Commission, to inspect, examine, and ascertain the accuracy of any and all electric meters used or intended to be used for measuring and ascertaining the quantity of electric current furnished for light, heat, or power by any person or corporation to or for the use of any person or corporation, and to inspect, examine, and ascertain the accuracy of all apparatus for testing and proving the accuracy of electric meters; and when found to be or made to be correct the inspector shall stamp or mark all such meters and apparatus with some suitable device, which device shall be recorded in the office of the Commission. No corporation or person shall furnish, set, or put in use any electric meter the type of which shall not have been approved by the Commission or any meter not approved by an inspector of the Commission.

(d) Every person shall provide, repair, and maintain such suitable premises and apparatus and facilities as may be required and approved by the Commission for testing and proving the accuracy of gas and electric meters furnished for use by it, and by which apparatus every meter may be tested.

(e) If any consumer to whom a meter has been furnished shall request the Commission in writing to inspect such meter, the Commission shall have the same inspected and tested; if the same, on being so tested, shall be found to be more than 2 per centum defective or incorrect to the prejudice of the consumer, the inspector shall order the person furnishing the meter forthwith to remove the same and to place instead a correct meter, and the expense of such inspection and test shall be borne by the person; if the same, on being so tested, shall be found to be correct, the expense of such inspection and test shall be borne by the consumer.

(f) The Commission shall prescribe such rules and regulations to carry into effect the provisions of this section as it may deem necessary and shall fix uniform reasonable charges for the inspection and testing of meters upon complaint.

(Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 57; Apr. 5, 1939, 53 Stat. 568, ch. 38; Aug. 11, 1971, 85 Stat. 319, Pub. L. 92-94, § 1(a); May 9, 2000, D.C. Law 13-107, § 201(m), 47 DCR 1091.)

Cross references. — Public Service Commission, creation, powers and duties, see § 34-802.

Prior Codifications. — 1981 Ed., § 43-1003.

1973 Ed., § 43-603.

Effect of amendments. — D.C. Law 13-107 in the fourth unnumbered paragraph of subsec. (d) substituted "person" for "gas corporation and electrical corporation"; and in the fifth unnumbered paragraph of subsec. (e) substituted "person furnishing the meter" for "gas or electrical corporation" and "person" for "corporation".

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-301.

§ 34-304. Excessive charges a complete defense in suit to collect for gas or electricity furnished.

If it be alleged and established in an action brought in any court for the collection of any charge for gas or electricity that a price has been demanded in excess of that fixed by the Commission or by statute no recovery shall be had

therein, but the fact that such excessive charges have been made shall be a complete defense to such action.

(Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 58.)

Cross references. — Gas companies, removal of meters, notice, see § 34-1606.

Prior Codifications. — 1981 Ed., § 43-1004.

1973 Ed., § 43-604.

CASE NOTES

In general.

If an electric rate has been properly promulgated by Public Service Commission and is reasonable, just and nondiscriminatory, electric utility must charge that rate and, correspondingly, consumer must pay that amount unless there is a valid defense to such a charge. D.C. Code §§ 43-201a, 43-301, 43-401. District of Columbia v. Potomac Electric Power Co., 402 A.2d 430, 1979 D.C. App. LEXIS 377 (1979).

§ 34-305. Appointment and removal of inspectors and assistant inspectors of gas and meters.

The appointment and power to remove the Inspector of Gas and Meters and Assistant Inspectors of Gas and Meters from office is hereby vested in the Commission. All the powers and duties of such inspectors conferred and imposed by statute shall be exercised and performed under the supervision and control of the Commission.

(Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 59.)

Prior Codifications. — 1981 Ed., § 43-1005.

1973 Ed., § 43-605.

§ 34-306. Inspector of Gas and Meters to transfer books to Commission.

The Inspector of Gas and Meters provided for by law prior to March 4, 1913, shall transfer and deliver to the Commission all books, maps, papers, records, apparatus, and the property of whatsoever description in his possession, and said Commission is authorized to take possession of all books, maps, papers, records, apparatus, and property of whatsoever description.

(Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 60.)

Prior Codifications. — 1981 Ed., § 43-1006.

1973 Ed., § 43-606.

Chapter 4. General Provisions.

Sec.
34-401. Utilities to report accidents; Commission may investigate.
34-402. Commission to inquire into violations by utilities; enforcement of laws affecting utilities.
34-403. Chapters to be liberally construed; severability of provisions.
34-404. Number of directors of public utilities.
34-405. Existing laws to remain in force.
34-406. Action pending March 4, 1913, unaffected by this subtitle.
34-407. Right to alter, amend, or repeal reserved.

§ 34-401. Utilities to report accidents; Commission may investigate.

(a) Every public utility shall, whenever an incident occurs within the District of Columbia that results in the loss of human life, personal injury requiring hospitalization, or service disruption directly or indirectly arising from or connected with its maintenance or operation, give immediate notice thereof to the Public Service Commission and the Office of the People's Counsel of the District of Columbia. In the event of any such incident, the public utility shall also submit a written report to the Commission that explains the cause of the incident, what steps if any the public utility will undertake to prevent such an occurrence in the future, and such other information which the Public Service Commission shall, by order or regulation, require. The Commission, by regulation or order, shall establish the minimum criteria for a service disruption (e.g., time period or minimum number of affected customers) that warrants notification and a report under this section. The Commission, if it deems the public interest requires it, shall cause an investigation to be made of any incident.

(b) The report required by subsection (a) of this section shall not be admitted into evidence for any purpose in any suit or action for damages arising out of the loss of life, injury, or service interruption referred to in this subtitle.

(Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 89; Apr. 12, 2005, D.C. Law 15-342, § 303(a), 52 DCR 2346.)

Prior Codifications. — 1981 Ed., § 43-101. 1973 Ed., § 43-1001.

Effect of amendments. — D.C. Law 15-342 rewrote the section which had read as follows: "Every public utility shall, whenever an accident attended with loss of human life or personal injury without loss of human life occurs within the District of Columbia, upon its premises, or directly or indirectly arising from or connected with its maintenance or operation, give immediate notice thereof to the Public Service Commission of the District of Columbia. In the event of any such accident, the Commission, if it deem the public interest requires it, shall cause an investigation to be made forthwith."

Emergency legislation. — For temporary (90 day) amendment of section, see § 303(a) of Omnibus Utility Emergency Amendment Act of 2005 (D.C. Act 16-12, January 28, 2005, 52 DCR 2945).

Legislative history of Law 15-342. — Law 15-342, the "Omnibus Utility Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-872 which was referred to the Committee on Public Interest. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 31, 2005, it was assigned Act No. 15-760 and transmitted to both Houses of Congress for its review. D.C. Law 15-342 became effective on April 12, 2005.

CASE NOTES

Judicial deference to Commission.
Ultimate responsibility for determining correct meaning of statute is the duty of District of Columbia Court of Appeals but it accords substantial deference to any reasonable interpretation of Public Utilities Act by Public Service Commission which is charged with Act's administration and enforcement. D.C. Code 1981, § 43-101 et seq. Professional Answering Service, Inc. v. Chesapeake & Potomac Tel. Co., 565 A.2d 55, 1989 D.C. App. LEXIS 200 (1989).

§ 34-402. Commission to inquire into violations by utilities; enforcement of laws affecting utilities.

The Commission shall inquire into any neglect or violation of the laws or regulations in force in the District of Columbia by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be its duty, to enforce the provisions of this subtitle as well as all other laws relating to public utilities.

(Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 90.)

Cross references. — Penal provisions, see §§ 34-701 et seq.

Prior Codifications. — 1981 Ed., § 43-102. 1973 Ed., § 43-1002.

§ 34-403. Chapters to be liberally construed; severability of provisions.

The provisions of this subtitle shall be interpreted and construed liberally in order to accomplish the purposes thereof, and where any specific power or authority is given the Commission by the provisions of this subtitle the enumeration thereof shall not be held to exclude or impair any power or authority otherwise in this subtitle conferred on said Commission; provided, that the supply and sale of electricity shall not be regulated by the Commission except as expressly set forth in Chapter 15 of this title; provided further, that the supply and sale of natural gas by a licensed natural gas supplier shall not be regulated by the Commission except as expressly set forth in Chapter 16C of this title; provided further, that Internet Protocol-enabled Service, as defined in § 34-2001(7A), or Voice Over Internet Protocol-enabled Service, as defined in § 34-2001(23), shall not be regulated by the Commission. The Commission hereby created shall have, in addition to the powers in this subtitle specified, mentioned, and indicated all additional, implied, and incidental power which may be proper and necessary to effect and carry out, perform, and execute all the said powers herein specified, mentioned, and indicated. A substantial compliance with the requirements of this subtitle shall be sufficient to give effect to all the rules, orders, acts, and regulations of the Commission, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto. That each section of this subtitle, and every part of each section, are hereby declared to be independent sections and the holding of any section or sections or part or parts thereof to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other section or part thereof.

(Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 92; May 9, 2000, D.C. Law 13-107, § 201(a), 47 DCR 1091; Mar. 16, 2005, D.C. Law 15-227, § 17(c), 51 DCR 10549; June 5, 2008, D.C. Law 17-165, § 2, 55 DCR 5171.)

Cross references. — Prosecution, see § 34-731.

Prior Codifications. — 1981 Ed., § 43-103. 1973 Ed., § 43-1003.

Effect of amendments. — D.C. Law 13-107 added the concluding proviso.

D.C. Law 15-227, at the end of the first sentence, inserted "; provided further, that the supply and sale of natural gas by a licensed natural gas supplier shall not be regulated by the Commission except as expressly set forth in Chapter 16C of this title".

D.C. Law 17-165 inserted "; provided further, that Internet Protocol-enabled Service, as defined in § 34-2001(7A), or Voice Over Internet Protocol-enabled Service, as defined in § 34-2001(23), shall not be regulated by the Commission".

Legislative history of Law 13-107. — Law 13-107, the "Retail Electric Competition and Consumer Protection Act of 1999," was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-208.

Legislative history of Law 17-165. — Law 17-165, the "Telecommunications Competition Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-332 which was referred to the Committee on Public Service and Consumer Affairs. The Bill was adopted on first and second readings on March 4, 2008, and April 1, 2008, respectively. Signed by the Mayor on April 14, 2008, it was assigned Act No. 17-339 and transmitted to both Houses of Congress for its review. D.C. Law 17-165 became effective on June 5, 2008.

CASE NOTES

ANALYSIS

Additional, implied, and incidental power.
In general.
Telecommunications.

Additional, implied, and incidental power.

The incidental powers provision of the D.C. Public Utilities Act confers on the Public Service Commission ancillary powers to execute powers, not ancillary powers to execute goals, and any incidental power the Commission seeks must be instrumental to the exercise of a legitimate power the Act explicitly gives it. Wash. Gas Light Co. v. PSC of the Dist. of Columbia, 982 A.2d 691, 2009 D.C. App. LEXIS 502 (2009).

Public Utilities Commission's authority to permit use of fuel adjustment clause in electric utility rate schedule is included within "additional, implied and incidental power which may be proper and necessary to effect and carry out" Commission's enumerated statutory powers, and fuel adjustment clause is not inconsistent with system of fixed utility rates, nor is Commission's approval of its use inconsistent with its regulatory obligations; rejecting State ex rel. Utility Consumers Council v. Public Service Comm'n, 585 S.W.2d 41; In re Allied Power & Light Co., 132 Vt. 354, 321 A.2d 7. D.C. Code 1981, §§ 43-103, 43-903. People's Counsel of District of Columbia v. Public Service Com., 472 A.2d 860, 1984 D.C. App. LEXIS 316 (1984).

In general.

To sustain the public service commission's application of a statutory term respecting its jurisdiction, the United States Court of Appeals need not find that its construction is the only reasonable one, or even that it is the result the court would have reached had the question arisen in the first instance in judicial proceedings. Classified Directory Subscribers Asso. v. Public Service Com., 383 F.2d 510, 1967 U.S. App. LEXIS 5125 (C.A.D.C. 1967).

Public Utilities Commission had power to permit electric power company to use fuel adjustment clause as component of its rate schedule. D.C. Code 1981, §§ 43-103, 43-903. People's Counsel of District of Columbia v. Public Service Com., 472 A.2d 860, 1984 D.C. App. LEXIS 316 (1984).

Modern regulatory legislation is generally regarded as a newly conceived system of legal arrangements to deal with newly emergent problems in society, entitled to liberal construction because of its remedial character and not subject to the rule of strict construction of statutes in derogation of common law because its genesis and conception are wholly outside and apart from any common law frame of reference. D.C. Code § 43-1003. Chesapeake &

Potomac Tel. Co. v. Public Service Com., 378 A.2d 1085, 1977 D.C. App. LEXIS 394 (1977).

Telecommunications.

Advertising published in the classified telephone directory did not constitute a "service" so that the Public Service Commission did not have statutory jurisdiction to regulate the rates charged for advertising in the classified directory. D.C. Code 1961, §§ 43-104, 43-204, 43-414, 43-705, 43-706, 43-1003. Classified Directory Subscribers Asso. v. Public Service Com., 274 F. Supp. 261, 1966 U.S. Dist. LEXIS 9558 (D.D.C1966), affirmed by 383 F.2d 510, 127 U.S. App. D.C. 315, 1967 U.S. App. LEXIS 5125 (1967).

Public Service Commission had authority to order utility to deposit franchise tax for "other investigations" even though Office of the People's Counsel had requested franchise tax as "rate case"; Commission had obligation to determine appropriate basis for Office of the People's Counsel's assessment. D.C. Code 1981, §§ 43-103, 43-612(a)(2, 3), 43-906. Office of People's Counsel v. Public Service Com., 572 A.2d 410, 1990 D.C. App. LEXIS 56 (1990).

The Public Service Commission acted within scope of powers implied in its authorizing legislation in approving expedited compliance review mechanism for reviewing telephone company's individual case basis tariff filings for internal telecommunications service customers; individual case basis tariff procedure developed by the PSC unfettered telephone company from restraints that harmed its competitive position in relation to unregulated competitors. D.C. Code 1981, §§ 43-103, 43-601(d), 43-902. Office of People's Counsel v. Public Service Com., 571 A.2d 206, 1990 D.C. App. LEXIS 48 (1990).

§ 34-404. Number of directors of public utilities.

The Board of Directors of every public utility shall consist of not more than 17 nor less than 7 members, within which limitation the membership may be in any case increased or diminished, as the stockholders or the Board of Directors may from time to time determine.

(Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 100; July 20, 1996, D.C. Law 11-146, § 2, 43 DCR 2845.)

Prior Codifications. — 1981 Ed., § 43-104. 1973 Ed., § 40-1004.

Legislative history of Law 11-146. — Law 11-146, the "Public Utilities Board of Directors Amendment Act of 1996," was introduced in Council and Assigned Bill No. 11-536, which was referred to the Committee on Public Services and Regional Authorities. The Bill was adopted on first and second readings on April 2, 1996, and May 7, 1996, respectively. Signed by the Mayor on May 20, 1996, it was assigned Act No. 11-270 and transmitted to both Houses of Congress for its review. D.C. Law 11-146 became effective on July 20, 1996.

§ 34-405. Existing laws to remain in force.

Except as modified or changed by this subtitle and until modified or changed under its provisions, all charters, statutes, laws, ordinances, and regulations in force on March 4, 1913, shall remain and continue to be in full force and effect until altered, amended, or repealed according to law; provided, that all charters, statutes, acts, and parts of acts, laws, ordinances, and regulations enacted prior to March 4, 1913, inconsistent and repugnant to the provisions of this subtitle, and only so far as inconsistent and repugnant thereto, are hereby repealed.

(Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 101.)

Cross references. — Orders and court proceedings, appeals, see § 34-605.

Prior Codifications. — 1981 Ed., § 43-105. 1973 Ed., § 43-1005.

§ 34-406. Action pending March 4, 1913, unaffected by this subtitle.

This subtitle shall not affect actions or proceedings, civil or criminal, or quasi-criminal, pending on March 4, 1913, but the same may be prosecuted or defended as provided by preexisting law or regulation.

(Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 102.)

Prior Codifications. — 1981 Ed., § 43-106. 1973 Ed., § 43-1006.

§ 34-407. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal this subtitle.

(Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 103.)

Cross references. — General provisions, construction and severability of law, see § 34-403.

Separability clauses, see §§ 34-405 and 34-406.

Prior Codifications. — 1981 Ed., § 43-107. 1973 Ed., § 43-1007.

CHAPTER 5. ISSUANCE OF SECURITIES.

Sec.
34-501. Creation of liens on property of utilities; supervision by Commission.
34-502. Certificate showing authority to issue stock or pay dividends to be obtained.
34-503. Stocks not to be issued until certificate is recorded.
34-504. Issue of stocks for purpose of reorganization or consolidation; approval of consolidation by Commission.
34-505. Application of proceeds of stock.
34-506. Stock to be void unless law is complied with.
34-507. Penalty for improper issuance or application of stock or proceeds.

§ 34-501. Creation of liens on property of utilities; supervision by Commission.

The power to create liens on corporate property by public utilities in the District of Columbia is hereby declared to be a special privilege, the right of supervision, regulation, restriction, and control of which is hereby vested in the Public Service Commission of the District of Columbia, and such power shall be exercised according to the provisions of this subtitle.

(Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 72; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21.)

Prior Codifications. — 1981 Ed., § 43-701. 1973 Ed., § 43-801.

§ 34-502. Certificate showing authority to issue stock or pay dividends to be obtained.

No public utility shall hereafter issue any stocks, stock certificates, bonds, mortgages, or any other evidences of indebtedness payable in more than 1 year from date, or pay any stock, bond or scrip dividend, until it shall have first obtained the certificate of the Commission showing authority for such issue from the Commission.

(Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 73; Aug. 4, 1955, 69 Stat. 485, ch. 545, § 2.)

Cross references. — Penal provisions, stock issue by false statements, see § 34-701.

Prior Codifications. — 1981 Ed., § 43-702. 1973 Ed., § 43-802.

§ 34-503. Stocks not to be issued until certificate is recorded.

No public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness for money, property, or services, either directly or indirectly, nor shall it receive any money, property, or services in payment of the same, either directly or indirectly, until there shall have been recorded upon the books of such public utility the certificate of the Commission in this subtitle provided for.

(Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 74.)

Cross references. — Penal provisions, stock issue by false statements, see § 34-701.

Prior Codifications. — 1981 Ed., § 43-703. 1973 Ed., § 43-803.

§ 34-504. Issue of stocks for purpose of reorganization or consolidation; approval of consolidation by Commission.

No public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness secured on its property in the District of Columbia for the purpose of any reorganization or consolidation in excess of the total amount of the stocks, certificates of stock, bonds, or other evidences of indebtedness then outstanding against the public utilities so reorganizing or consolidating, and no such public utility shall purchase the property of any other public utility for the purpose of effecting a consolidation until the Commission shall have determined and set forth in writing that said consolidation will be in the public interest, nor until the Commission shall have approved in writing the terms upon which said consolidation shall be made.

(Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 76.)

Cross references. — Sale and merger of utilities, generally, see § 34-1001.

Prior Codifications. — 1981 Ed., § 43-704. 1973 Ed., § 43-805.

§ 34-505. Application of proceeds of stock.

No public utility shall apply the proceeds of any such stock, certificates of stock, bonds, or other evidences of indebtedness to any other purpose or issue the same on any less favorable terms than that specified in the certificate issued by the Commission.

(Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 77.)

Prior Codifications. — 1981 Ed., § 43-705. 1973 Ed., § 43-806.

CASE NOTES

In general.

When land no longer used in delivering service to public was sold by public utility company, financial gain representing appreciation of property while in service accrued to company's shareholders; allocation of gains on land sales to shareholders alone was appropriate rate-making treatment for maintaining financial integrity of utility and establishing rates which were just, reasonable and nondiscriminatory. Washington Public Interest Organization v. Public Service Com., 446 A.2d 28, 1982 D.C. App. LEXIS 367 (1982).

§ 34-506. Stock to be void unless law is complied with.

All stocks, certificates of stock, bonds, and other evidences of indebtedness issued contrary to the provisions of this subtitle shall be void.

(Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 78.)

Prior Codifications. — 1981 Ed., § 43-706. 1973 Ed., § 43-807.

§ 34-507. Penalty for improper issuance or application of stock or proceeds.

Any public utility, or any agent, director, or officer thereof, who shall, directly or indirectly, issue or cause to be issued any stocks, certificates of stock, bonds, or other evidences of indebtedness contrary to the provisions of this subtitle, or who shall apply the proceeds from the sale thereof to any purposes other than that specified in the certificate of the Commission, shall forfeit and pay into the Treasury of the United States, to the credit of the General Fund of the District of Columbia, not less than $1,000 nor more than $10,000 for each offense.

(Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 79; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18.)

Cross references. — Penal provision, recovery on rights, penalties and forfeitures, see § 34-711.

Penal provisions, deposits from fines and penalties, see § 34-710.

Penal provisions, stock issue by false statements, see § 34-701.

Failure to obey Commission, penalties, see §§ 34-706, 34-731 and 34-732.

General provisions, construction and severability of law, see § 34-403.

Prior Codifications. — 1981 Ed., § 43-707. 1973 Ed., § 43-808.

CHAPTER 6. ORDERS AND COURT PROCEEDINGS.

Sec.
34-601. Schedules to conform to orders of Commission; schedule of changes to be approved by Commission.
34-602. Commission may rescind, alter, or amend orders fixing rates.
34-603. Rates to be in force and to be prima facie reasonable.
34-604. Application to Court of Appeals for instructions; application for reconsideration.
34-605. Appeal to Court of Appeals from certain orders; statement to accompany decision; Commission not liable for costs or damages.
34-606. Appeal limited to questions of law.
34-607. Orders to remain in force pending appeal; suspension of order.
34-608. Authority of Commission to rescind its order after appeal is filed.
34-609. Method of review exclusive.
34-610. Production of incriminating evidence compellable; immunity from prosecution.
34-611. Commission to furnish certified copies of orders.

§ 34-601. Schedules to conform to orders of Commission; schedule of changes to be approved by Commission.

All public utilities to which an order of the Commission applies shall make such changes in their schedules on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any public utility in any such rates, tolls, or charges, or in any joint rate or rates, without the approval of the Commission. Certified copies of all other orders of the Commission shall be delivered to the public utility affected thereby in like manner, and the same shall take effect within such reasonable time thereafter as the Commission shall prescribe.

(Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 61.)

Cross references. — Rate change procedures, appeal and review, see § 34-901.

Rates and charges, Commission's power to regulate, see § 34-709.

Rate schedules, changes, see §§ 34-1123 et seq.

Prior Codifications. — 1981 Ed., § 43-901. 1973 Ed., § 43-701.

CASE NOTES

In general.

Public Service Commission policy decision regarding calculation of gas company's rates was ripe for review because pertinent facts were not in dispute, issue of federal preemption was strictly legal question, and rule established by Commission was final order. D.C. Code 1981, § 43-905(a). Washington Gas Light Co. v. Public Service Com., 508 A.2d 930, 1986 D.C. App. LEXIS 324 (1986).

Public Service Commission policy decision regarding calculation of gas company rates was ripe for review in that both agency and public utility had affirmative interest in resolving matter immediately, rather than in wasting time and money in complying, or requiring compliance, with rule and litigating its validity thereafter. D.C. Code 1981, § 43-905(a). Washington Gas Light Co. v. Public Service Com., 508 A.2d 930, 1986 D.C. App. LEXIS 324 (1986).

Once final rate-making order based on substantial evidence had set out specifically how electric utility rates and rate design would be changed, no further adjudication of parties' rights or revised rate schedules was involved in compliance filing procedure, and the Public Service Commission's action in approving schedules through abbreviated, technical treatment would be upheld. D.C. Code 1981, §§ 43-901, 43-906. People's Counsel of District of Columbia v. Public Service Com., 462 A.2d 1105, 1983 D.C. App. LEXIS 424 (1983).

Absent a controlling statutory provision, no reason existed to construe telephone company's "new service" offering, viz., a technologically

improved PBX system, as essentially different from a rate change application, wherein Public Service Commission approval is statutorily required. D.C. Code §§ 43-323, 43-401, 43-408, 43-411, 43-701. Chesapeake & Potomac Tel. Co. v. Public Service Com., 378 A.2d 1085, 1977 D.C. App. LEXIS 394 (1977).

§ 34-602. Commission may rescind, alter, or amend orders fixing rates.

The Commission may, at any time, upon notice to the public utility and after opportunity to be heard as provided in § 34-910, rescind, alter, or amend any order fixing any rate or rates, tolls, charges, or schedules, or any other order made by the Commission, and certified copies of the same shall be served and take effect as herein provided for original orders.

(Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 62.)

Prior Codifications. — 1981 Ed., § 43-902. 1973 Ed., § 43-702.

CASE NOTES

In general.

The Public Utilities Commission (PSC) may modify policy choices so long as it explains the basis for the change. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

The Public Service Commission acted within scope of powers implied in its authorizing legislation in approving expedited compliance review mechanism for reviewing telephone company's individual case basis tariff filings for internal telecommunications service customers; individual case basis tariff procedure developed by the PSC unfettered telephone company from restraints that harmed its competitive position in relation to unregulated competitors. D.C. Code 1981, §§ 43-103, 43-601(d), 43-902. Office of People's Counsel v. Public Service Com., 571 A.2d 206, 1990 D.C. App. LEXIS 48 (1990).

§ 34-603. Rates to be in force and to be prima facie reasonable.

All rates, tolls, charges, time and condition of payment thereof, schedules, and joint rates fixed by the Commission shall be in force and shall be prima facie reasonable until finally found otherwise in an action brought for that purpose.

(Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 63.)

Prior Codifications. — 1981 Ed., § 43-903. 1973 Ed., § 43-703.

CASE NOTES

ANALYSIS

In general.
Retroactive ratemaking.

In general.

Public Service Commission's decision, that asset recovery charge provision of plan to divest electric utility of its power generation assets, was in the interest of District residents, was not unreasonable, arbitrary, or capricious; Commission found that the rate reduction for residents was certain regardless of success of sale and that costs ratepayers might incur were at most the same they would pay absent divestiture, and Commission offered a reasoned consideration of the relevant factors and interests. Moore Energy Res. v. PSC of the Dist. of Columbia, 785 A.2d 300, 2001 D.C. App. LEXIS 237 (2001).

Public Utilities Commission had power to permit electric power company to use fuel adjustment clause as component of its rate sched-

ule. D.C. Code 1981, §§ 43-103, 43-903. People's Counsel of District of Columbia v. Public Service Com., 472 A.2d 860, 1984 D.C. App. LEXIS 316 (1984).

Retroactive ratemaking.

Notice of challenge to ratemaking does not relieve the regulatory body from the prohibition against retroactive ratemaking; instead, it changes what would be purely retroactive ratemaking into a functionally prospective process by placing the relevant audience on notice at the outset that the rates being promulgated are provisional only and subject to later revision. District of Columbia v. District of Columbia, PSC, 905 A.2d 249, 2006 D.C. App. LEXIS 479 (2006), remanded by 963 A.2d 1144, 2009 D.C. App. LEXIS 170 (D.C. 2009).

District was not entitled to retroactive relief from filed rate for 911 service from the Public Service Commission (PSC), under the filed rate doctrine and its corollary rule against retroactive application of a rate, even if rate was originally authorized in error, given that rate was approved as presented by carrier and District failed to timely seek reconsideration, and there was no allegation that rate was procured by fraud. District of Columbia v. District of Columbia, PSC, 905 A.2d 249, 2006 D.C. App. LEXIS 479 (2006), remanded by 963 A.2d 1144, 2009 D.C. App. LEXIS 170 (D.C. 2009).

§ 34-604. Application to Court of Appeals for instructions; application for reconsideration.

(a) If at any time the Commission shall be in doubt of the elements of value to be by them considered in arriving at the true valuation under the provisions of this subtitle, they are authorized and empowered to institute a proceeding in equity in the District of Columbia Court of Appeals petitioning said court to instruct them as to the element or elements of value to be by them considered as aforesaid, and the particular utility under valuation at the time shall be made party defendant in said action.

(b) Any public utility or any other person or corporation affected by any final order or decision of the Commission may, within 30 days after the publication thereof, file with the Commission an application in writing requesting a reconsideration of the matters involved, and stating specifically the errors claimed as grounds for such reconsideration. No public utility or other person or corporation shall in any court urge or rely on any ground not so set forth in said application. The Commission, within 30 days after the filing of such application, shall either grant or deny it. Failure by the Commission to act upon such application within such period shall be deemed a denial thereof. If such application be granted, the Commission, after giving notice thereof to all interested parties, shall, either with or without hearing, rescind, modify, or affirm its order or decision. The filing of such an application shall act as a stay upon the execution of the order or decision of the Commission until the final action of the Commission upon the application; provided, that upon written consent of the utility such order or decision shall not be stayed unless otherwise ordered by the Commission. No appeal shall lie from any order of the Commission unless an application for reconsideration shall have been first made and determined.

(Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 64; Aug. 27, 1935, 49 Stat. 882, ch. 742, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 588, Pub. L. 91-358, title I, § 168(a)(1).)

Cross references. — Valuation of public utilities by Commission, see §§ 34-1105 et seq.

Section references. — This section is referred to in §§ 34-607 and 34-609.

Prior Codifications. — 1981 Ed., § 43-904. 1973 Ed., § 43-704.

Editor's notes. — Former § 43-910 1981 Ed., 49 Stat. 885, ch. 742, § 4, provided that if any provision this section or the application to any person or circumstances is held invalid, the invalidity of the remainder of said sections and of the application of such provision to other persons and circumstances shall not be affected thereby.

CASE NOTES

ANALYSIS

Appealable issues.
Exhaustion of issue.
In general.
Jurisdictional prerequisite.
Publication.
Sufficiency of application.
Sufficiency of notice.
Time of application.

Appealable issues.

Court of Appeals would not defer to Public Service Commission's interpretation of statute requiring issue-exhaustion, in appeal by natural gas utility of Commission order imposing forfeiture sanction in a rate proceeding when utility failed to provide a complete unredacted copy of its contract with a third party as ordered by the Commission, when determining whether the statute imposed a jurisdictional bar or instead codified common-law exhaustion doctrine; though the Commission might have the power to require particular procedures for filing an application for reconsideration under the statute, insofar as the statute implicated the Court of Appeals' power to review a Commission decision the Court rather than the Commission administered the statute. Wash. Gas Light Co. v. PSC of the Dist. of Columbia, 982 A.2d 691, 2009 D.C. App. LEXIS 502 (2009).

Association of telephone answering services' claim that finding by the Public Service Commission approving proposed increases in rates for a certain type of equipment used with telephone answering service switchboards was not supported by substantial evidence would not be considered on appeal, since association did not raise claim in its petition for reconsideration. D.C. Code 1981, § 43-904(b). D.C. Tel. Answering Service Committee v. Public Service Com., 476 A.2d 1113, 1984 D.C. App. LEXIS 388 (1984).

Exhaustion of issue.

Court of Appeals would address the merits of the issue of whether the Public Service Commission had the statutory authority, in a rate proceeding, to impose a forfeiture sanction on natural gas utility for failing to provide a complete unredacted copy of its contract with a third party as ordered by the Commission, or whether the Commission by statute was required to bring an action in Superior Court in order to impose the forfeiture sanction, in utility's appeal of the sanction, though utility failed to exhaust the issue in the proceedings before the Commission by failing to raise it in its motion for reconsideration filed with the Commission, as the alleged defect in the Commission's jurisdiction was so serious that it would wholly deprive the Commission of the power to act and the Commission would have arrogated a power not conferred on it. Wash. Gas Light Co. v. PSC of the Dist. of Columbia, 982 A.2d 691, 2009 D.C. App. LEXIS 502 (2009).

While under the remedies-exhaustion provision of statute governing appeals from the Public Service Commission the failure of a party petitioning for review to file an application for reconsideration before the Commission divests the Court of Appeals of jurisdiction to hear the appeal, the issue-exhaustion bar in the same statute codifies the common-law doctrine of exhaustion, and thus the Court of Appeals has jurisdiction to consider every issue the appealing party presents regardless of whether it was raised before the Commission provided the appealing party has filed an application for reconsideration, though the Court will not review nonexhausted issues unless extraordinary circumstances compels the Court to do so. Wash. Gas Light Co. v. PSC of the Dist. of Columbia, 982 A.2d 691, 2009 D.C. App. LEXIS 502 (2009).

If an alleged defect in the Public Service Commission's jurisdiction is so serious that it wholly deprives the Commission of the power to act, the Court of Appeals retains the discretion to reach the jurisdictional question notwithstanding a party's failure to raise it before the Commission pursuant to the doctrine of exhaustion. Wash. Gas Light Co. v. PSC of the Dist. of Columbia, 982 A.2d 691, 2009 D.C. App. LEXIS 502 (2009).

In general.

In reviewing order of District of Columbia Public Service Commission, it is especially important to accord great respect to Commission in complex, esoteric area such as rate-making in which Commission has been entrusted with difficult task of deciding among many competing arguments and policies. D.C. Code §§ 43-704 to 43-710, 43-706. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

In reviewing rate order of District of Columbia Public Service Commission, determination

of reviewing court must focus on whether result reached is arbitrary, and the appealing party bears burden of clearly demonstrating arbitrary action, which burden cannot be met by advancing alternative techniques from which Commission could have chosen. D.C. Code §§ 43-704 to 43-710, 43-706. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

Where District of Columbia Public Service Commission, in including plant under construction in rate base, chose between alternatives and achieved reasonable result, its findings could not be disturbed. D.C. Code §§ 43-704 to 43-710, 43-706. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

Public Service Commission's order establishing fair rate of return for electric utility and increase in gross operating revenues necessary to obtain such rate of return was final order subject to review even though it was followed by later order establishing rate schedules. D.C. Code §§ 43-704, 43-705. Goodman v. Public Service Com., 467 F.2d 375, 1972 U.S. App. LEXIS 10039 (C.A.D.C. 1972).

Great respect is accorded to decisions of Public Service Commission. D.C. Code 1973, § 43-706. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

Court of Appeals may not reassess weights given by rate-making agency to different factors, absent legislative direction as to precisely what gravity each factor bears; all reviewing court may properly do is to consider whether agency did take into account all relevant factors and no others. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

Jurisdictional prerequisite.

The filing of a complaint with the Public Utilities Commission of the District of Columbia, asking it to review a decision reached after a public hearing fixing gas rates, is not a condition precedent to the filing of a bill, under Act March 4, 1913, § 8, par. 64, D.C. Code 1929, T. 26, § 89, to have the decision declared void. Hollis v. Kutz, 41 S.Ct. 371, 1921 U.S. LEXIS 1741 (U.S.Dist.Col. 1921).

The statutory requirement of filing a timely petition for reconsideration of an adverse decision of the Public Service Commission is jurisdictional. King v. PSC, 963 A.2d 140, 2008 D.C. App. LEXIS 497 (2008), writ of certiorari dismissed by 556 U.S. 1205, 129 S. Ct. 2056, 173 L. Ed. 2d 1130, 2009 U.S. LEXIS 3188, 77 U.S.L.W. 3595 (2009).

Request for reconsideration was jurisdictional prerequisite for filing petition of appeal from order of Public Service Commission of the District of Columbia approving rate schedules and regulations proposed by regulated utility. D.C. Code §§ 43-704, 43-705. Watergate Improv. Associates v. Public Service Com., 326 A.2d 778, 1974 D.C. App. LEXIS 275 (1974).

Seeking reconsideration of public service commission order is jurisdictional prerequisite to filing an appeal; however, one need not have been a party to the proceeding before the public service commission to seek reconsideration, one need only be affected by the order in question. D.C. Code § 43-704. Goodman v. Public Service Com., 309 A.2d 97, 1973 D.C. App. LEXIS 347 (1973).

Publication.

Pursuant to statute requiring that application for reconsideration of final order of Public Service Commission be filed within 30 days of "publication" of that order, "publication" occurred when Commission released written version of final decision in case and not when Commission publicly announced its decision at earlier "sunshine" hearing. D.C. Code § 43-704. People's Counsel of District of Columbia v. Public Service Com., 414 A.2d 520, 1980 D.C. App. LEXIS 274 (1980).

Sufficiency of application.

Petition of motor lines company which operated bus lines under routes the effect of which was to provide direct passenger service to downtown Washington, D.C., or by connecting carrier to any part of Washington, D.C., for reconsideration by Public Utilities Commission of order which extended lines of another bus company which operated in area, was sufficient to comply with section of District Code permitting public utility affected by order of Commission to apply for reconsideration, as against contention that petition was insufficient and that therefore motor lines had not exhausted administrative remedies and could not seek relief in court. D.C. Code 1951, §§ 43-704, 43-705. Washington, Marlboro & Annapolis Motor Lines v. Public Utilities Commission of District of Columbia, 114 F.Supp. 321, 1950 U.S. Dist. LEXIS 4291 (D.D.C1950).

Corporation's petition for review that was not initially signed by counsel but instead by corporation's president was not a jurisdictional defect and corporation was allowed to cure irregularity, where Public Service Commission and utility supporting Commission's decision that corporation was seeking review of were not misled or prejudiced by allowing corporation to cure irregularity, and president of corporation was permitted to appear on behalf of his company during Commission's proceedings. Moore Energy Res. v. PSC of the Dist. of Columbia, 785 A.2d 300, 2001 D.C. App. LEXIS 237 (2001).

Application for reconsideration of Public Service Commission decision by gas utility which

merely stated that if challenged Commission's adherence to formula for allocation of administrative and general costs preserved the issue for appeal to Court of Appeals because statute requires only that an application for reconsideration state specifically the errors claimed. D.C. Code 1981, § 43-904(b). Washington Gas Light Co. v. Public Service Com., 483 A.2d 1164, 1984 D.C. App. LEXIS 528 (1984).

Sufficiency of notice.

Court of Appeals would consider decision of Public Service Commission permitting telephone company to guarantee that any losses from individual case basis tariffs for internal telecommunications service customers would be covered by telephone company's shareholders in reviewing timely petition for review of PSC's denial of challenge to approved expedited procedure for such tariff filings, despite delay in attacking shareholder guarantee, inasmuch as shareholder guarantee was one of central reasons PSC decided to permit expedited compliance review mechanism that was subject of appeal. D.C. Code 1981, § 43-904. Office of People's Counsel v. Public Service Com., 571 A.2d 206, 1990 D.C. App. LEXIS 48 (1990).

Given adequacy of "broad" notice, which was typical of standard notice issued in public utility cases, and General Service Administration's actual notice that private line rates were at issue in connection with telephone company's application for rate increase as evidenced by its active participation in proceeding, public notice provided by Commission constituted sufficient notice that private line rates could be affected during rate proceeding. D.C. Code 1981, § 43-904. General Services Admin. v. Public Service Com., 469 A.2d 1238, 1983 D.C. App. LEXIS 530 (1983).

Time of application.

Where first order of the Public Utilities Commission of the District of Columbia in proceedings for increase of rates for electric power was in effect an interlocutory order formulating merely principles on which new rate schedules should be prescribed, and second order prescribing actual rates was the final order, petition for reconsideration filed within 30 days of second order, though not filed within 30 days of first order, sufficiently complied with statutory requirement that in order to be qualified to appeal from an order of the commission party claiming to be aggrieved must make an application to commission for reconsideration within 30 days after publication of its final order or decision. D.C. Code 1940, §§ 43-705, 43-706. Leeman v. Public Utilities Commission of District of Columbia, 104 F.Supp. 553, 1952 U.S. Dist. LEXIS 4351 (D.D.C1952).

The Public Service Commission did not act unlawfully in violation of statutory requirements when it extended by 30 days the initial 30-day period set by statute before it denied an application by the United States for reconsideration in a complex telephone rate case. D.C. Code 1981, § 43-904. United States v. Public Service Com., 465 A.2d 829, 1983 D.C. App. LEXIS 461 (1983).

When the last day of specific time period falls on a Sunday or legal holiday, the next day not a Sunday or legal holiday is deemed to be the final day of the period. D.C. Code 1981, §§ 43-904(b), 43-905. People's Counsel v. Public Service Com., 451 A.2d 90, 1982 D.C. App. LEXIS 447 (1982).

Because thirtieth day within which Public Service Commission was required to act on petition for reconsideration fell on a Sunday the next day was deemed the thirtieth day for purposes of determining whether the Commission acted and as Commission did not act by Monday it was deemed to have denied the petition on that date and the 60-day period for seeking judicial review was then counted from that Monday, beginning with the next day. D.C. Code 1981, §§ 43-904(b), 43-905. People's Counsel v. Public Service Com., 451 A.2d 90, 1982 D.C. App. LEXIS 447 (1982).

§ 34-605. Appeal to Court of Appeals from certain orders; statement to accompany decision; Commission not liable for costs or damages.

(a) The District of Columbia Court of Appeals shall have jurisdiction to hear and determine any appeal from an order or decision of the Commission. Any public utility or any other person or corporation affected by any final order or decision of the Commission, other than an order fixing or determining the value of the property of a public utility in a proceeding solely for that purpose, may, within 60 days after final action by the Commission upon the petition for reconsideration, file with the Clerk of the District of Columbia Court of Appeals a petition of appeal setting forth the reasons for such appeal and the relief sought; at the same time such appellant shall file with the Commission notice

in writing of the appeal together with a copy of the petition. Within 20 days of the receipt of such notice of appeal the Commission shall file with the Clerk of the said Court the record, including a transcript of all proceedings had and testimony taken before the Commission, duly certified, upon which the said order or decision of the Commission was based, together with a statement of its findings of fact and conclusions upon the said record, and a copy of the application for reconsideration and the orders entered thereon; provided, that the parties, with the consent and approval of the Commission, may stipulate in writing that only certain portions of the record be transcribed and transmitted. Within this period the Commission or any other interested party shall answer, demur, or otherwise move or plead. Thereupon the appeal shall be at issue and ready for hearing. All such proceedings shall have precedence over any civil cause of a different nature pending in said Court, and the District of Columbia Court of Appeals shall always be deemed open for the hearing thereof. Any such appeal shall be heard upon the record before the Commission, and no new or additional evidence shall be received by the said Court. The said Court, or any judge or judges thereof, before whom any such appeal shall be heard, may require and direct the Commission to receive additional evidence upon any subject related to the issues on said appeal concerning which evidence was improperly excluded in the hearing before the Commission or upon which the record may contain no substantial evidence. Upon receipt of such requirement and direction the Commission shall receive such evidence and without reasonable delay shall transmit to the said Court the findings of fact made thereon by the Commission and the conclusions of the Commission upon the said facts.

(b) Upon the conclusion of its hearings of any such appeal the Court shall either dismiss the said appeal and affirm the order or decision of the Commission or sustain the appeal and vacate the Commission's order or decision. In either event the Court shall accompany its order by a statement of its reasons for its action and in the case of the vacation of an order or decision of the Commission the statement shall relate the particulars in and the extent to which such order or decision was defective.

(c) Said Commission shall not, nor shall any of its members, officers, agents, or employees, be taxed with any costs, nor shall they or any of them be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said Commission, or any of its members, officers, agents, or employees, shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any public utility or person, nor required in any case to make any deposit for costs or pay for any service to the clerks of any court or to the Marshal of the United States.

(Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 65; Aug. 27, 1935, 49 Stat. 882, ch. 742, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 583, 588, Pub. L. 91-358, title I, §§ 163(i)(2), 168(a)(2).)

Cross references. — Investigations of public utilities, assessing expenses, see § 34-912.

Section references. — This section is referred to in § 34-609.

Prior Codifications. — 1981 Ed., § 43-905. 1973 Ed., § 43-705.

Editor's notes. — Former § 43-910 1981 Ed., 49 Stat. 885, ch. 742, § 4, provided that if

any provision this section or the application to any person or circumstances is held invalid, the invalidity of the remainder of said sections and of the application of such provision to other persons and circumstances shall not be affected thereby.

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ANALYSIS

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Declaratory orders.

Refusal of Public Utilities Commission to issue declaratory order was not reviewable by Court of Appeals, despite fact that Commission provided detailed explanation for its ruling and despite statute which grants jurisdiction to Court of Appeals to hear and determine any appeal from or decision of Commission. D.C. Code 1981, §§ 1-1508, 43-905(a). People's Counsel of District of Columbia v. Public Service Com., 474 A.2d 1274, 1984 D.C. App. LEXIS 366 (1984).

Reviewability of Public Utilities Commission's refusal to issue declaratory order concerns availability of review and not its scope or procedure by which it is secured; thus, statute which grants Court of Appeals jurisdiction to hear and determine any appeal from order or decision of Commission did not permit review of Commission's refusal to issue declaratory order. D.C. Code 1981, §§ 1-1508, 43-905(a). People's Counsel of District of Columbia v. Public Service Com., 474 A.2d 1274, 1984 D.C. App. LEXIS 366 (1984).

Deference to Commission.

In evaluating the Public Service Commission's (PSC) rationale, it is especially important to accord great respect to the Commission in a complex, esoteric area such as rate-making in which the Commission has been entrusted with the difficult task of deciding among many competing arguments and policies. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

Questions of regulatory policy of Public Service Commission (PSC), as distinct from questions of law, are beyond both the jurisdiction and the competence of a reviewing court. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

In recognition of the authority delegated to the Public Service Commission by Congress, and of the expertise of the commissioners in the complex and esoteric area of utility regulation, Court of Appeals accords great respect to the decisions of the commissioners. Moore Energy Res. v. PSC of the Dist. of Columbia, 785 A.2d 300, 2001 D.C. App. LEXIS 237 (2001).

Court of Appeals accords deference to expertise of commissioners of Public Service Commission of District of Columbia in those areas of utility regulation, such as rate design, in which commissioners are particularly proficient; as such, rate-making order is presumptively valid and will not be disturbed absent showing of fatal flaw in action taken. D.C. Code 1981, §§ 43-905, 43-906. General Services Admin. v. Public Service Com., 469 A.2d 1238, 1983 D.C. App. LEXIS 530 (1983).

While the Court of Appeals must ascertain that, in striking a balance between the competing consumer and investor interests, the Public Service Commission has given reasoned consideration to each of the pertinent factors, the Court must not substitute its judgment for that of the Commission. Potomac Elec. Power Co. v. Public Service Com'n of Dist. of Columbia, 457 A.2d 776, 1983 D.C. App. LEXIS 325 (1983).

Even though the Court of Appeals might arrive at a somewhat different decision than did the Public Service Commission on an application for rate relief, if there is substantial evidence to support the Commission's findings and conclusions and the Commission has given reasoned consideration to each of the pertinent factors, the Court must affirm. Potomac Elec. Power Co. v. Public Service Com'n of Dist. of Columbia, 457 A.2d 776, 1983 D.C. App. LEXIS 325 (1983).

Great respect is accorded to decisions of Public Service Commission. D.C. Code 1973, § 43-706. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

Reviewing court may not supplant valid theories employed by Public Service Commission with those more nearly to its liking. D.C. Code

1973, § 43-706. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

Court of Appeals may not reassess weights given by rate-making agency to different factors, absent legislative direction as to precisely what gravity each factor bears; all reviewing court may properly do is to consider whether agency did take into account all relevant factors and no others. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

Even if court disagrees with Public Service Commission, if the Commission has fully and clearly explained what it does and why it does it, and agency decision is supported by substantial evidence, court, upon finding that Commission order is reasonable in its overall effect, should sustain order. D.C. Code 1973, § 43-706. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

Electricity.

If total effect of rates fixed by the Public Utilities Commission of the District of Columbia for electric power cannot be said to be unjust and unreasonable, judicial inquiry is at an end. D.C. Code 1940, §§ 43-705, 43-706. Leeman v. Public Utilities Commission of District of Columbia, 104 F.Supp. 553, 1952 U.S. Dist. LEXIS 4351 (D.D.C1952).

On appeals from orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power, federal District Court could consider whether commission committed any error of law vitiating its orders, whether conclusions were adequately supported by findings of fact, and whether findings of fact were sustained by substantial evidence. D.C. Code 1940, §§ 43-705, 43-706. Leeman v. Public Utilities Commission of District of Columbia, 104 F.Supp. 553, 1952 U.S. Dist. LEXIS 4351 (D.D.C1952).

Corporation was not precluded from raising on review contention that decision of Public Service Commission to approve plan to divest electric utility of its electrical generation assets was not in the interest of District residents due to specific provisions of plan; though another party and not corporation specifically identified those provisions as contrary to resident's interests during Commission proceedings, corporation was not asserting a new grounds for reversal as it did argue to Commission that plan was not in residents' interests. Moore Energy Res. v. PSC of the Dist. of Columbia, 785 A.2d 300, 2001 D.C. App. LEXIS 237 (2001).

Public Service Commission's decision, that asset recovery charge provision of plan to divest electric utility of its power generation assets, was in the interest of District residents, was not unreasonable, arbitrary, or capricious; Commission found that the rate reduction for residents was certain regardless of success of sale and that costs ratepayers might incur were at most the same they would pay absent divestiture, and Commission offered a reasoned consideration of the relevant factors and interests. Moore Energy Res. v. PSC of the Dist. of Columbia, 785 A.2d 300, 2001 D.C. App. LEXIS 237 (2001).

It was for the Public Service Commission, not the Court of Appeals, to determine which of two acceptable accounting methods for dealing with funds invested in plant construction was to be adopted in the best interest of the public. People's Counsel of District of Columbia v. Public Service Com., 455 A.2d 391, 1982 D.C. App. LEXIS 497 (1982).

Judicial review of basic ratemaking principles with respect to marginal cost base, time of day pricing adopted by Public Service Commission for large demand customers of electric utility, without considering specific TOD rates, would not impermissibly interfere with administrative decision-making process and was appropriate given fact that issue was fit for judicial decision and that parties would suffer hardship without judicial review. Metropolitan Washington Bd. of Trade v. Public Service Com., 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

Where Public Service Commission had not issued any final order or decision in case involving application by electric utility for rate increase, People's Counsel could not appeal Commission orders excluding testimony submitted by People's Counsel out of time, since Commission's evidentiary rulings did not irrevocably deprive People's Counsel or general public of any rights, and there was no indication that normal appellate review would be unable to vindicate rights of any parties which might be adversely affected by Commission's evidentiary rulings. D.C. Code §§ 11-722, 43-705. People's Counsel of District of Columbia v. Public Service Com., 414 A.2d 516, 1980 D.C. App. LEXIS 270 (1980).

Sole rate-making authority in electric utility rate cases is vested in Public Service Commission; Court of Appeals is not to substitute its judgment for that of the Commission; even though the Court might arrive at somewhat different decision than did the Commission, if there is substantial evidence to support Commission's findings and conclusions, the Court must affirm. D.C. Code § 43-706. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

As long as there is substantial evidence to support reasoned conclusion of Public Service Commission in electric utility rate case the

Court of Appeals must affirm. D.C. Code § 43-706. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

No single formula or combination of formulas limits a regulatory commission's power to set "just and reasonable" electricity rates; however, a commission is obliged to make pragmatic adjustments where appropriate circumstances exist and courts may intervene only on a "clear showing" of a due process violation and if the rate order, viewed in its entirety, produces no arbitrary result, judicial inquiry is to be terminated. D.C. Code §§ 43-301, 43-401, 43-411, 43-705; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Finality of orders.

Public Service Commission's order establishing fair rate of return for electric utility and increase in gross operating revenues necessary to obtain such rate of return was final order subject to review even though it was followed by later order establishing rate schedules. D.C. Code §§ 43-704, 43-705. Goodman v. Public Service Com., 467 F.2d 375, 1972 U.S. App. LEXIS 10039 (C.A.D.C. 1972).

It is not necessary that a Public Service Commission order be issued at the conclusion of a proceeding to be appealable; a "final" order may be issued and reviewed at any point during a Commission proceeding. D.C. Code 1981, § 43-905. Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

Public Service Commission's deposit orders assessing electric power company for expenses of the Office of People's Counsel were final for purposes of appeal. D.C. Code 1981, §§ 43-612, 43-612(a), 43-905. Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

Public Service Commission order, entered in rate-making proceeding, restricting intervenor's submission of evidence of gas and light company's allegedly discriminatory employment practices to evidence that would tend to show that practices affected revenues, expenses or services within the District was not a final appealable order; intervenor's mere allegation of constitutional violations was not enough to convert the evidentiary ruling into a final order. D.C. Code § 43-705. Washington Urban League, Inc. v. Public Service Com., 295 A.2d 906, 1972 D.C. App. LEXIS 272 (1972).

For an administrative order to be final, for purpose of appeal, it must impose an obligation, deny a right or fix some legal relationship as a consummation of the administrative process. D.C. Code § 43-705. Washington Urban League, Inc. v. Public Service Com., 295 A.2d 906, 1972 D.C. App. LEXIS 272 (1972).

Although an administrative order defining the issues to be examined in a hearing and limiting evidence to that which is relevant to those issues is final in the sense that it requires one appearing before the commission to either conform his evidence to the issues or to institute a separate hearing, such order is typically interlocutory, rather than final, for purposes of appeal. D.C. Code § 43-705. Washington Urban League, Inc. v. Public Service Com., 295 A.2d 906, 1972 D.C. App. LEXIS 272 (1972).

Findings.

Findings of administrative agency such as Public Utility Commission of District of Columbia, where there is evidence to support them, may not be set aside by court. Washington Gas Light Co. v. Byrnes, 137 F.2d 547, 1943 U.S. App. LEXIS 4109 (1943).

If the Public Service Commission's (PSC) findings of fact are supported, then the substantial evidence test is satisfied so long as the Commission fully and clearly explains its decision and demonstrates a rational connection between facts found and the choice made. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

Public Service Commission must not only issue final order or decision, but also must specify its criteria and clearly explain how its findings rationally support order. People's Counsel of District of Columbia v. Public Service Com., 414 A.2d 520, 1980 D.C. App. LEXIS 274 (1980).

Gas charges.

Public Service Commission policy decision regarding calculation of gas company's rates was ripe for review because pertinent facts were not in dispute, issue of federal preemption was strictly legal question, and rule established by Commission was final order. D.C. Code 1981, § 43-905(a). Washington Gas Light Co. v. Public Service Com., 508 A.2d 930, 1986 D.C. App. LEXIS 324 (1986).

Public Service Commission policy decision regarding calculation of gas company rates was ripe for review in that both agency and public utility had affirmative interest in resolving matter immediately, rather than in wasting time and money in complying, or requiring compliance, with rule and litigating its validity thereafter. D.C. Code 1981, § 43-905(a). Washington Gas Light Co. v. Public Service Com., 508 A.2d 930, 1986 D.C. App. LEXIS 324 (1986).

Where Public Service Commission had never before ruled on accounting treatment of advertising expenses, gas company, not Commission, bore burden of explaining reasonableness of its

ruling. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

Only Public Service Commission's inclusion in gas company's cost of service of $132,000 actually incurred during test year was ripe for review, and complaint about how postyear expenses would be recovered was premature. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

No case or controversy was presented by Public Service Commission's merely having checked new rates against administration's wage-and-price standards, where guidelines played no affirmative role in Commission's formulation of rate schedule. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

In general.

In proceeding by the Public Utilities Commission of the District of Columbia to determine whether installation and use of radio receivers in streetcars and busses were consistent with public convenience, comfort and safety, weight to be attached to public opinion surveys was a proper matter for determination by the Commission. D.C. Code 1940, §§ 43-408 to 43-410. Public Utilities Commission of District of Columbia v. Pollak, 72 S.Ct. 813, 1952 U.S. LEXIS 2061 (U.S.Dist.Col. 1952).

In proceeding by the Public Utilities Commission of the District of Columbia to determine whether installation and use of radio receivers in streetcars and busses were consistent with public convenience, comfort and safety, courts on review were expressly restricted to facts found by Commission insofar as those findings did not appear to be unreasonable, arbitrary or capricious. D.C. Code 1940, §§ 43-408 to 43-410. Public Utilities Commission of District of Columbia v. Pollak, 72 S.Ct. 813, 1952 U.S. LEXIS 2061 (U.S.Dist.Col. 1952).

Where order of the Public Utilities Commission dismissed its investigation of protests by passengers against use of radio loudspeakers on vehicles of transit company of the District of Columbia and the final decision of the Commission was that the transit company could use loudspeakers in its vehicles, the order was appealable. D.C. Code 1940, § 43-705. Pollak v. Public Utilities Commission of District of Columbia, 191 F.2d 450, 1951 U.S. App. LEXIS 3457 (C.A.D.C. 1951).

The power to fix public utility rates is a legislative power which has been delegated by Congress to Public Utility Commission of District of Columbia, and in its exercise, within constitutional limits, discretion of commission may not be controlled even by courts. D.C. Code 1940, §§ 43-202, 43-401, 43-306, 43-402, 43-408. Washington Gas Light Co. v. Byrnes, 137 F.2d 547, 1943 U.S. App. LEXIS 4109 (1943).

If the Public Service Commission fully and clearly explains what it does and why it does it, and the agency decision is supported by substantial evidence, the Court of Appeals, upon a finding that the Commission order is reasonable in its overall effect, must sustain the order, even if the Court disagrees with the Commission. Potomac Elec. Power Co. v. Public Service Com'n of Dist. of Columbia, 457 A.2d 776, 1983 D.C. App. LEXIS 325 (1983).

Court of Appeals, in reviewing order of Public Service Commission, must examine entire record to decide whether the findings are supported by substantial evidence and whether Commission could thoroughly and reasonably find the facts as it did. D.C. Code §§ 43-705, 43-706. Apartment House Council, Inc. v. Public Service Com., 332 A.2d 53, 1975 D.C. App. LEXIS 299 (1975).

Interlocutory appeal.

Interlocutory appeal from evidentiary rulings by Public Service Commission is not available unless Commission's rulings irrevocably deprive party of any rights, or normal appellate review will be unable to vindicate rights of any parties which might be adversely affected by evidentiary rulings. D.C. Code§§ 11-722, 43-705. People's Counsel of District of Columbia v. Public Service Com., 414 A.2d 516, 1980 D.C. App. LEXIS 270 (1980).

Moot cases.

An order of Public Utilities Commission granting an increase in cash fare to be charged by transit company was not moot due to suppression of that order by subsequent order which continued in effect increased cash fare since validity of first order during time it was in effect remained in controversy, in that disposition of any excess funds which might have accumulated prior to subsequent order, by reason of invalidity of the increase, remained for decision. D.C. Code 1961, § 43-705. Bebchick v. Public Utilities Com., 318 F.2d 187, 1963 U.S. App. LEXIS 6270 (C.A.D.C. 1963), writ of certiorari denied by 373 U.S. 913, 83 S. Ct. 1304, 10 L. Ed. 2d 414, 1963 U.S. LEXIS 1657 (1963).

Appeal of 1975 electric utility rate order was not moot despite issuance of 1976 order. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

Persons "affected by".

Where order of the Public Utilities Commission authorized District of Columbia transit company to use radio loudspeakers in its vehicles, persons who used the services of the transit and intervened before the Commission were

"affected by" the Commission's order and could appeal. D.C. Code 1940, § 43-705. Pollak v. Public Utilities Commission of District of Columbia, 191 F.2d 450, 1951 U.S. App. LEXIS 3457 (C.A.D.C. 1951).

The term "person affected", as used in Utility Law authorizing any public utility or other person or corporation affected by any final order of decision of Public Utilities Commission of District of Columbia to appeal to District Court, includes a consumer of a public utility company. D.C. Code 1940, § 43-705. U.S. v. Public Utilities Commission of District of Columbia, 151 F.2d 609, 1945 U.S. App. LEXIS 3397 (1945).

The word "affected", as used in Utility Law authorizing any public utility or other person or a corporation affected by any final order or decision of Public Utility Commission of District of Columbia to appeal to District Court, was chosen by Congress to expand the privilege of complaint and appeal beyond that contemplated by words it used in other statutes, and beyond the conventional tests used in equity suits seeking restraint of governmental action. D.C. Code 1940, § 43-705. U.S. v. Public Utilities Commission of District of Columbia, 151 F.2d 609, 1945 U.S. App. LEXIS 3397 (1945).

Persons entitled to seek review.

Commercial and residential electricity consumer had standing to seek review of order determining fair rate of return to electric utility and increase and gross revenues necessary to obtain such return. D.C.C.E § 43-705. Goodman v. Public Service Com., 467 F.2d 375, 1972 U.S. App. LEXIS 10039 (C.A.D.C. 1972).

Prerequisites to appeal.

Request for reconsideration was jurisdictional prerequisite for filing petition of appeal from order of Public Service Commission of the District of Columbia approving rate schedules and regulations proposed by regulated utility. D.C. Code §§ 43-704, 43-705. Watergate Improv. Associates v. Public Service Com., 326 A.2d 778, 1974 D.C. App. LEXIS 275 (1974).

Presumptions and burden of proof.

Orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power carried presumption of validity, and those who would upset the rate orders had heavy burden of making a convincing showing that orders were invalid because unjust and unreasonable. D.C. Code 1940, §§ 43-705, 43-706. Leeman v. Public Utilities Commission of District of Columbia, 104 F.Supp. 553, 1952 U.S. Dist. LEXIS 4351 (D.D.C1952).

In light of Public Service Commission's (PSC) expertise, its rate orders are presumptively valid, and petitioner challenging order carries heavy burden of demonstrating clearly and convincingly a fatal flaw in action taken. D.C. Code 1981, §§ 43-905(a), 43-906. Potomac Elec. Power Co. v. Public Serv. Comm'n., 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

Rate orders of the Public Service Commission are presumptively valid, and a petitioner challenging such an order carries the heavy burden of demonstrating clearly and convincingly a fatal flaw in the action taken. Potomac Elec. Power Co. v. Public Service Com'n of Dist. of Columbia, 457 A.2d 776, 1983 D.C. App. LEXIS 325 (1983).

Petitioners seeking review of Public Service Commission orders bear heavy burden of showing a fatal flaw which renders the Commission's findings and conclusions unreasonable, arbitrary and capricious, a burden not met by merely setting forth an acceptable alternative to Commission action. D.C. Code 1973, § 43-706. People's Counsel of District of Columbia v. Public Service Com., 455 A.2d 391, 1982 D.C. App. LEXIS 497 (1982).

Rate-making orders, as the product of expert judgment, are presumptively valid; petitioner challenging order carries heavy burden of demonstrating clearly and convincingly a fatal flaw in action taken. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

The Public Service Commission must satisfy its own burden to base its decision on sufficient evidence and to explain its actions fully and carefully, but once the Commission has satisfied this burden and has issued a decision, the burden of the party challenging the decision to demonstrate reversible error is considerable because the party must assert more than a difference of opinion and must establish clearly and convincingly a fatal flaw in the action taken. Public Utility Regulatory Policies Act of 1978, §§ 101, 111, 111(d)(1-4), 16 U.S.C. §§ 2611, 2621, 2621(d)(1-4). Metropolitan Washington Bd. of Trade v. Public Service Com., 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

Onus is on party appealing from rate order entered by Public Service Commission to make a convincing showing that order is invalid because it is unjust and unreasonable in its consequences. D.C. Code §§ 43-705, 43-706. Apartment House Council, Inc. v. Public Service Com., 332 A.2d 53, 1975 D.C. App. LEXIS 299 (1975).

Onus was on association, which represented hotel, two office buildings and three cooperative apartment buildings and which sought appellate review of rate schedules and regulations governing steam and chilled water service to the complex, to make a convincing showing that the rate order was invalid because it was unjust and unreasonable in its consequences. D.C. Code § 43-705. Watergate Improv. Associates v.

Public Service Com., 326 A.2d 778, 1974 D.C. App. LEXIS 275 (1974).

Remand.

Where record on appeal from Public Utilities Commission's order extending bus service did not contain sufficient evidence to enable court to make determination of competitor's claims, court was authorized to remand case. D.C. Code 1940, § 43-705. Washington, Marlboro & Annapolis Motor Lines v. Public Utilities Commission of District of Columbia, 114 F.Supp. 328, 1952 U.S. Dist. LEXIS 4612 (D.D.C1952).

Review by mandamus.

People's Counsel could not obtain review via petition for writ of mandamus of Public Service Commission's order excluding testimony submitted out of time where Commission had not issued any final order or decision in case and interlocutory appellate review was not available. D.C. Code §§ 11-722, 43-705. People's Counsel of District of Columbia v. Public Service Com., 414 A.2d 516, 1980 D.C. App. LEXIS 270 (1980).

Scope of review.

Regardless of the issue or the type of proceeding, when the Public Service Commission (PSC) makes factual findings based on the record before it, review by the Court of Appeals extends to whether those findings are supported by substantial evidence. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

Court of Appeals would not take judicial notice, in review of Public Service Commission decision approving plan to divest electric utility of its electrical generation assets, of newspaper articles and enactments by California legislature, where most if not all of such information was neither presented to the Commission or in existence at the time the Commission denied motion to reconsider its decision. Moore Energy Res. v. PSC of the Dist. of Columbia, 785 A.2d 300, 2001 D.C. App. LEXIS 237 (2001).

Judicial review of order of Public Utilities Commission is limited to questions of law, including constitutional questions, and findings of fact by Commission shall be conclusive unless they are unreasonable, arbitrary, or capricious; review of Commission's order is narrowest judicial review in field of administrative law. D.C. Code 1981, §§ 43-905, 43-906. People's Counsel of District of Columbia v. Public Service Com., 472 A.2d 860, 1984 D.C. App. LEXIS 316 (1984).

Court of Appeals' scope of review of Public Utility Commission orders is the narrowest judicial review in the field of administrative law; this is because Congress vested sole ratemaking authority in the expertise of the Public Service Commission. Potomac Elec. Power Co. v. Public Service Com'n of Dist. of Columbia, 457 A.2d 776, 1983 D.C. App. LEXIS 325 (1983).

Court of Appeals' scope of review on appeal from orders of Public Service Commission is confined to questions of law; findings of fact are conclusive unless they are unreasonable, arbitrary or capricious. D.C. Code §§ 43-705, 43-706. Apartment House Council, Inc. v. Public Service Com., 332 A.2d 53, 1975 D.C. App. LEXIS 299 (1975).

Statement accompanying decision.

For purposes of Public Service Commission's (PSC) burden to explain its actions fully and clearly for purposes of judicial review, full and clear explanation of ratemaking decision must include the following components: first, Commission must announce criteria governing rate determination and, second, it must explain how particular rate order reflects application of these criteria to facts of case. D.C. Code 1981, §§ 43-905(a), 43-906. Potomac Elec. Power Co. v. Public Serv. Comm'n., 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

While reasonableness of overall effect of order remains primary consideration in Court of Appeals' review of Public Service Commission (PSC) utility rate order, Commission nonetheless has obligation to disclose methodology by which that decision was reached, for actual methodology used may have bearing on Court's overall judgment as to reasonableness of order. D.C. Code 1981, §§ 43-905(a), 43-906. Potomac Elec. Power Co. v. Public Serv. Comm'n., 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

In order to ensure meaningful judicial review of a decision of the Public Service Commission, the Court of Appeals has imposed an independent burden on the Commission to explain its actions fully and clearly by announcing the criteria governing its determination, and explaining how the particular order reflects application of these criteria to the facts of the case. Potomac Elec. Power Co. v. Public Service Com'n of Dist. of Columbia, 457 A.2d 776, 1983 D.C. App. LEXIS 325 (1983).

It is essential that Public Service Commission provide a full explanation when it exercises its discretion to allocate gains and losses realized upon the transfer of utility property. People's Counsel of District of Columbia v. Public Service Com., 455 A.2d 391, 1982 D.C. App. LEXIS 497 (1982).

Telecommunications.

Advertising published in the classified telephone directory did not constitute a "service" so that the Public Service Commission did not have statutory jurisdiction to regulate the rates charged for advertising in the classified directory. D.C. Code 1961, §§ 43-104, 43-204, 43-414, 43-705, 43-706, 43-1003. Classified Directory Subscribers Asso. v. Public Service Com.,

274 F. Supp. 261, 1966 U.S. Dist. LEXIS 9558 (D.D.C1966), affirmed by 383 F.2d 510, 127 U.S. App. D.C. 315, 1967 U.S. App. LEXIS 5125 (1967).

In examining rate design portion of Public Service Commission's grant of increase of 10.9 million dollars to telephone company, Court of Appeals not only had to determine whether increase's overall impact was just and reasonable but also whether Commission made findings based on substantial evidence and applied correct legal standards to its substantive deliberations. D.C. Code 1981, §§ 43-905, 43-906. General Services Admin. v. Public Service Com., 469 A.2d 1238, 1983 D.C. App. LEXIS 530 (1983).

Public Service Commission, which heard extensive testimony, considered numerous cost studies and made in-depth analysis of telephone company's proposed reduction of basic service rates as well as impact of substantial increases proposed by telephone company for vertical and private line services, fully explained rate design it adopted in connection with its grant of increase of 10.9 million dollars to telephone company and basic service, vertical and private line rates it adopted represented just and reasonable rates. D.C. Code 1981, §§ 43-905, 43-906. General Services Admin. v. Public Service Com., 469 A.2d 1238, 1983 D.C. App. LEXIS 530 (1983).

One who alleges that he uses and pays for telephone service is "person or corporation affected by" order increasing telephone rates. D.C. Code § 43-705. Telephone Users Asso. v. Public Service Com., 304 A.2d 293, 1973 D.C. App. LEXIS 263 (1973), writ of certiorari denied by 415 U.S. 933, 94 S. Ct. 1448, 39 L. Ed. 2d 492, 1974 U.S. LEXIS 1364 (1974).

Telephone users' association which, according to Federal Communications Commission, appeared to be for all intents and purposes the alter ego of its attorney and was not, according to telephone company's records, a subscriber to telephone service was not a "person or corporation affected by" order increasing telephone rates. D.C. Code § 43-705. Telephone Users Asso. v. Public Service Com., 304 A.2d 293, 1973 D.C. App. LEXIS 263 (1973), writ of certiorari denied by 415 U.S. 933, 94 S. Ct. 1448, 39 L. Ed. 2d 492, 1974 U.S. LEXIS 1364 (1974).

Time for seeking judicial review.

Corporation's failure to cure irregularity in petition for review within mandatory and jurisdictional time requirement was irrelevant, where petition was filed well with such time requirement. Moore Energy Res. v. PSC of the Dist. of Columbia, 785 A.2d 300, 2001 D.C. App. LEXIS 237 (2001).

When the last day of specific time period falls on a Sunday or legal holiday, the next day not a Sunday or legal holiday is deemed to be the final day of the period. D.C. Code 1981, §§ 43-904(b), 43-905. People's Counsel v. Public Service Com., 451 A.2d 90, 1982 D.C. App. LEXIS 447 (1982).

Because thirtieth day within which Public Service Commission was required to act on petition for reconsideration fell on a Sunday the next day was deemed the thirtieth day for purposes of determining whether the Commission acted and as Commission did not act by Monday it was deemed to have denied the petition on that date and the 60-day period for seeking judicial review was then counted from that Monday, beginning with the next day. D.C. Code 1981, §§ 43-904(b), 43-905. People's Counsel v. Public Service Com., 451 A.2d 90, 1982 D.C. App. LEXIS 447 (1982).

Validity of prior law.

If Act March 4, 1913, § 8, par. 65 (D.C. Code 1929, T. 26, § 90, forbidding recourse to the courts to set aside, vacate, and amend orders of the Public Utilities Commission of the District of Columbia after 120 days, and paragraph 69 (section 94) putting burden on the party adverse to the commission to show by clear and satisfactory evidence the inadequacy, unreasonableness, or unlawfulness of the order complained of, are unconstitutional, they do not render the whole act unconstitutional, in view of paragraph 92 (section 118). Keller v. Potomac Electric Power Co., 43 S.Ct. 445, 1923 U.S. LEXIS 2575 (U.S.Dist.Col. 1923).

§ 34-606. Appeal limited to questions of law.

In the determination of any appeal from an order or decision of the Commission the review by the Court shall be limited to questions of law, including constitutional questions; and the findings of fact by the Commission shall be conclusive unless it shall appear that such findings of the Commission are unreasonable, arbitrary, or capricious.

(Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 66; Aug. 27, 1935, 49 Stat. 883, ch. 742, § 2.)

Section references. — This section is referred to in § 34-609.

Prior Codifications. — 1981 Ed., § 43-906. 1973 Ed., § 43-706.

Editor's notes. — Former § 43-910 1981 Ed., 49 Stat. 885, ch. 742, § 4, provided that if any provision this section or the application to any person or circumstances is held invalid, the invalidity of the remainder of said sections and of the application of such provision to other persons and circumstances shall not be affected thereby.

CASE NOTES

ANALYSIS

Carriers.
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Carriers.

Order of the Public Utilities Commission directing transit company to transfer a sum from the proceeds of the sale of property from its earned surplus account to three different accounts was not unreasonable, arbitrary or capricious. D.C. Code 1951, §§ 43-310, 43-314, 43-706. D.C. Transit System, Inc. v. Public Utilities Commission of Dist. of Col., 292 F.2d 734, 1961 U.S. App. LEXIS 4461 (C.A.D.C. 1961).

Deference to Commission.

In reviewing order of District of Columbia Public Service Commission, it is especially important to accord great respect to Commission in complex, esoteric area such as rate-making in which Commission has been entrusted with difficult task of deciding among many competing arguments and policies. D.C. Code §§ 43-704 to 43-710, 43-706. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

An appellate court ordinarily defers to the Public Utility Commission's reasonable interpretation of its own regulations. Office of the People's Counsel v. PSC, 955 A.2d 169, 2008 D.C. App. LEXIS 439 (2008).

Very substantial deference to Public Service Commission (PSC) was required in determining whether its rule on assessing competitive electric suppliers, competitive natural gas suppliers, and competitive local exchange carriers (CLEC) to fund PSC was arbitrary or capricious. Wash. Gas Energy Servs., Petitioner v. D.C. PSC, 924 A.2d 296, 2007 D.C. App. LEXIS 236 (2007).

An agency's findings of fact that are supported by substantial evidence will be sustained even if there is substantial evidence in the record to support contrary findings. Wash. Gas Light Co. v. D.C. PSC, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

Public policy decisions made by the Public Service Commission are beyond both the jurisdiction and the competence of a reviewing court. Wash. Gas Light Co. v. D.C. PSC, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

Although Court of Appeals does not give the Public Service Commission's (PSC) conclusion the same deference owed factual determinations, Court nonetheless will sustain it if it is reasonable and based upon factors within the Commission's expertise. District of Columbia v. PSC of D.C., 802 A.2d 373, 2002 D.C. App. LEXIS 376 (2002).

While Court of Appeals does not give the Public Service Commission's (PSC) legal conclusion the same deference owed factual determinations, it nonetheless will sustain conclusion if it is reasonable and based upon factors within the PSC's expertise. Office of the People's Counsel v. PSC, 799 A.2d 376, 2002 D.C. App. LEXIS 297 (2002).

When reviewing Public Service Commission's (PSC) legal determinations with respect to matters within its specialized competence, Court of Appeals must be appropriately deferential. Office of the People's Counsel v. PSC, 799 A.2d 376, 2002 D.C. App. LEXIS 297 (2002).

In general, Court of Appeals defers to Public Service Commission's (PSC) construction of a statute it is charged with administering, so long as that construction enhances the general purposes and policies underlying the statute. Office of the People's Counsel v. PSC, 799 A.2d 376, 2002 D.C. App. LEXIS 297 (2002).

Questions of regulatory policy of Public Service Commission (PSC), as distinct from questions of law, are beyond both the jurisdiction and the competence of a reviewing court. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

In evaluating the Public Service Commission's (PSC) rationale, it is especially important to accord great respect to the Commission in a complex, esoteric area such as rate-making in

which the Commission has been entrusted with the difficult task of deciding among many competing arguments and policies. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

In recognition of the authority delegated to the Public Service Commission by Congress, and of the expertise of the commissioners in the complex and esoteric area of utility regulation, Court of Appeals accords great respect to the decisions of the commissioners. Moore Energy Res. v. PSC of the Dist. of Columbia, 785 A.2d 300, 2001 D.C. App. LEXIS 237 (2001).

Public Service Commission's (PSC) interpretation of particular contexts in which its proceedings arose is matter within its expertise and to which Court of Appeals defers. D.C. Code 1981, § 43-906. Watergate E. v. District of Columbia Pub. Serv. Comm'n, 662 A.2d 881, 1995 D.C. App. LEXIS 137 (1995).

Legal determinations of Public Service Commission (PSC) are to be viewed with deference with respect of matters within its specialized competence; weight to be accorded PSC's legal views is at its zenith when inquiry relates to arcane questions regarding proposed rate increases; however, PSC has no intrinsic expertise in interpreting federal statutes which have no special application to public utilities, and which were obviously enacted without any participation by PSC. D.C. Code 1981, § 43-906. Jordan v. Public Serv. Comm'n, 622 A.2d 1106, 1993 D.C. App. LEXIS 60 (1993).

Policy decisions are within the exclusive domain of the Public Service Commission and are beyond both the jurisdiction and competence of a reviewing court. D.C. Code 1981, § 43-906. Washington Metropolitan Area Transit Authority v. Public Service Com., 486 A.2d 682, 1984 D.C. App. LEXIS 583 (1984).

Court of Appeals would defer to utility commission's determination that future oil-coal price differential was so exceptionally unpredictable that commission should not hazard a guess and then base a decision on that guess in determining whether to order conversion of recently completed power-generating plant from an oil-burning to a coal-burning facility. D.C. Code 1981, § 43-906. People's Counsel of District of Columbia v. Public Service Com., 474 A.2d 835, 1984 D.C. App. LEXIS 376 (1984).

Court of Appeals accords deference to expertise of commissioners of Public Service Commission of District of Columbia in those areas of utility regulation, such as rate design, in which commissioners are particularly proficient; as such, rate-making order is presumptively valid and will not be disturbed absent showing of fatal flaw in action taken. D.C. Code 1981, §§ 43-905, 43-906. General Services Admin. v. Public Service Com., 469 A.2d 1238, 1983 D.C. App. LEXIS 530 (1983).

Since Congress has delegated rate-making authority to the Public Service Commission, not to the reviewing court, great deference must be accorded to the expertise and decision of the Commission, while according the narrowest judicial review to the decision. D.C. Code 1981, § 43-906. United States v. Public Service Com., 465 A.2d 829, 1983 D.C. App. LEXIS 461 (1983).

Where Public Service Commission has accompanied its rate ruling with required full and careful explanation, ruling is entitled to great deference. D.C. Code 1981, § 43-906. Washington Gas Light Co. v. Public Service Com., 452 A.2d 375, 1982 D.C. App. LEXIS 476 (1982), writ of certiorari denied by 462 U.S. 1107, 103 S. Ct. 2454, 77 L. Ed. 2d 1334, 1983 U.S. LEXIS 419, 51 U.S.L.W. 3871 (1983).

On application for rate increase, utility has initial burden of proving its need for cash working capital, but once utility has borne such burden and Public Service Commission has determined amount needed, Court of Appeals may not set aside amount authorized by Commission absent abuse of discretion. D.C. Code 1981, § 43-906. Washington Gas Light Co. v. Public Service Com., 452 A.2d 375, 1982 D.C. App. LEXIS 476 (1982), writ of certiorari denied by 462 U.S. 1107, 103 S. Ct. 2454, 77 L. Ed. 2d 1334, 1983 U.S. LEXIS 419, 51 U.S.L.W. 3871 (1983).

Great respect is accorded to decisions of Public Service Commission. D.C. Code 1973, § 43-706. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

Reviewing court may not supplant valid theories employed by Public Service Commission with those more nearly to its liking. D.C. Code 1973, § 43-706. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

Electricity.

District of Columbia Public Service Commission was not shown, in fixing electric power rates, to have recompensed power company for past losses. D.C. Code §§ 43-401, 43-706. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

In electric power rate case in District of Columbia, evidence before Public Service Commission sustained its findings that rate of return had declined and that decline was attrition related. D.C. Code § 43-706. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

In analyzing whether new rate established by District of Columbia Public Service Commission for electric power was or was not arbitrary, each component of determination was to be analyzed, i. e., reviewing court was to ascertain whether each of elements of Commission's or-

der was supported by substantial evidence in the record. D.C. Code §§ 43-401, 43-704 to 43-710, 43-706. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

The statutory authority of the Court of Appeals to review questions of law implies necessity for making findings, in proceeding to determine rates for power company, rationally manifesting method used in determining such rates. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

After parties submitted proposed settlement regarding unbundled electricity rate issues, Public Service Commission (PSC) had prerogative to modify or clarify list of issues that PSC had previously said needed to be addressed to unbundle rates, and was not required to hold a hearing on every issue on list. District of Columbia v. PSC of D.C., 802 A.2d 373, 2002 D.C. App. LEXIS 376 (2002).

Public Service Commission (PSC) was not required to consider testimony related to rate review in considering proposed settlement regarding unbundled electricity rate issues; rates had already been set during previous rate case, and those rates had been reduced and capped as part of earlier settlement. District of Columbia v. PSC of D.C., 802 A.2d 373, 2002 D.C. App. LEXIS 376 (2002).

Public Service Commission (PSC) was not required to consider testimony and arguments on system reliability in considering proposed settlement regarding unbundled electricity rate issues; PSC concluded that provision of ancillary services was not implicated by settlement. District of Columbia v. PSC of D.C., 802 A.2d 373, 2002 D.C. App. LEXIS 376 (2002).

Public Service Commission (PSC) was not required to consider testimony on applicability of Federal Energy Regulatory Commission (FERC) test to electric company's classification of its facilities as distribution or transmission, in considering proposed settlement regarding unbundled electricity rate issues; evidence involved the mere possibility that FERC might review company's facility classifications. District of Columbia v. PSC of D.C., 802 A.2d 373, 2002 D.C. App. LEXIS 376 (2002).

Public Service Commission's (PSC) decision in electric rate case to disallow portion of electric utility's demand-side management (DSM) program costs was based on clearly articulated criteria of which utility had ample notice and, thus, Commission satisfied its obligation to announce criteria governing rate determination, where Commission listed, as contested issue for proceeding in prehearing conference report, issue of whether utility's demand-side management programs were prudently managed and consistent with Commission directives, which was standard established in prior case. D.C. Code 1981, § 43-906. Potomac Elec. Power Co. v. Public Serv. Comm'n., 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

Substantial evidence supported Public Service Commission's (PSC) finding in electric rate case that electric utility had not shown that all its demand-side management (DSM) programs were prudently managed; utility's voluminous evidence explaining and cataloguing its demand-side management expenditures did not address question of why it was necessary to spend money at those particular levels, and evidence did not explain what, if any, benefits would inure to ratepayers as result of utility's levels of spending on demand-side management programs. D.C. Code 1981, §§ 43-402, 43-906. Potomac Elec. Power Co. v. Public Serv. Comm'n., 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

Assuming that presumption, that ordinary business expenditures are prudently incurred, applied to electric utility's demand-side management (DSM) program costs in electric rate case, record contained sufficient evidence to overcome presumption; reasonableness of utility's demand-side management program costs was specifically designated as contested issue, and utility's own exhibits showed discrepancy between actual costs and budgeted and projected costs for demand-side management programs. D.C. Code 1981, §§ 43-402, 43-906. Potomac Elec. Power Co. v. Public Serv. Comm'n., 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

Where attrition is found to exist, Public Service Commission may use electric utility's year-end rather than year's average rate base in determining appropriate rate. D.C. Code § 43-706. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

In proceedings on application by electric utility for rate increase, Public Service Commission did not fail to account for attrition incurred by the utility in establishing rate base so as to render decision of the Commission arbitrary, capricious and unreasonable. D.C. Code § 43-706. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

In proceedings on application by electric utility for rate increase, substantial evidence supported finding of Public Service Commission that average investment in construction works in progress was appropriate figure to include in rate base calculations. D.C. Code § 43-706. Potomac Electric Power Co. v. Public Service

Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

Sole rate-making authority in electric utility rate cases is vested in Public Service Commission; Court of Appeals is not to substitute its judgment for that of the Commission; even though the Court might arrive at somewhat different decision than did the Commission, if there is substantial evidence to support Commission's findings and conclusions, the Court must affirm. D.C. Code § 43-706. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

As long as there is substantial evidence to support reasoned conclusion of Public Service Commission in electric utility rate case the Court of Appeals must affirm. D.C. Code § 43-706. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

Explanation of ruling.

The District of Columbia Public Utilities Commission should keep in mind its obligation to facilitate judicial review of its orders and should assemble record and make findings which cover all the relevant issues and should indicate the formula chosen and should make clear the evidentiary support for its findings under whatever formula adopted. D.C. Code 1940, § 43-706. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

To facilitate judicial review of its orders, the Public Service Commission must explain fully and carefully the methods by which, and the purposes for which, it has chosen to act, as well as its assessment of the consequences of its orders for the character and future development of the industry. Wash. Gas Light Co. v. D.C. PSC, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

To ensure that judicial review can be meaningful, Court of Appeals requires that the Public Service Commission (PSC) explain its actions fully and clearly; if it has done so, the petitioner challenging a PSC order assumes the heavy burden of demonstrating clearly and convincingly a fatal flaw in the action taken. District of Columbia v. PSC of D.C., 802 A.2d 373, 2002 D.C. App. LEXIS 376 (2002).

To ensure that judicial review of a Public Service Commission (PSC) order can be meaningful, Court of Appeals requires that the PSC explain its actions fully and clearly. Office of the People's Counsel v. PSC, 799 A.2d 376, 2002 D.C. App. LEXIS 297 (2002).

If Public Service Commission (PSC) explains its actions fully and clearly, then the petitioner challenging a PSC order assumes the heavy burden of demonstrating clearly and convincingly a fatal flaw in the action taken. Office of the People's Counsel v. PSC, 799 A.2d 376, 2002 D.C. App. LEXIS 297 (2002).

Public Service Commission (PSC) conducted sufficient review before approving public utilities' proposals to implement customer surcharges to recover lease payments to District of Columbia for use of streets and other property; PSC had no role in determining charges per linear foot that utilities were required to pay District or in the overall general structure of their recovery, but it did have responsibility to ensure that utilities' mechanism of recovery was appropriate, which it accomplished when it determined that the proposals complied with statutory requirements. Office of the People's Counsel v. PSC, 799 A.2d 376, 2002 D.C. App. LEXIS 297 (2002).

Public Service Commission (PSC) must fully and carefully explain its ruling, but once it provides such explanation, petitioner challenging its order assumes heavy burden of demonstrating clearly and convincingly a fatal flaw in action taken. D.C. Code 1981, § 43-906. Watergate E. v. District of Columbia Pub. Serv. Comm'n, 662 A.2d 881, 1995 D.C. App. LEXIS 137 (1995).

For purposes of Public Service Commission's (PSC) burden to explain its actions fully and clearly for purposes of judicial review, full and clear explanation of ratemaking decision must include the following components: first, Commission must announce criteria governing rate determination and, second, it must explain how particular rate order reflects application of these criteria to facts of case. D.C. Code 1981, §§ 43-905(a), 43-906. Potomac Elec. Power Co. v. Public Serv. Comm'n., 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

While reasonableness of overall effect of order remains primary consideration in Court of Appeals' review of Public Service Commission (PSC) utility rate order, Commission nonetheless has obligation to disclose methodology by which that decision was reached, for actual methodology used may have bearing on Court's overall judgment as to reasonableness of order. D.C. Code 1981, §§ 43-905(a), 43-906. Potomac Elec. Power Co. v. Public Serv. Comm'n., 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

The Public Service Commission must provide "full and careful explanation" of its ruling in order for Court of Appeals to accord it "great deference." D.C. Code 1981, § 43-906. Office of People's Counsel v. Public Service Com., 571 A.2d 206, 1990 D.C. App. LEXIS 48 (1990).

Although Public Service Commission is required to issue statement of findings and conclusions as to deposit orders assessing certain expenses of the Commission and the Office of People's Counsel against utilities, the degree of detail and discussion required with respect to such orders is not as great as that mandated in a rate case. D.C. Code 1981, §§ 43-612(a), 43-906. Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

To facilitate review by Court of Appeals, Public Service Commission must indicate fully and carefully methods by which, and purposes for which, it has chosen to act, as well as its assessment of consequences of its orders for character and future development of the industry. D.C. Code 1973, § 43-706. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

It is responsibility of Public Service Commission to present its decisions in manner amenable to judicial review. D.C. Code § 43-706. Telephone Users Asso. v. Public Service Com., 304 A.2d 293, 1973 D.C. App. LEXIS 263 (1973), writ of certiorari denied by 415 U.S. 933, 94 S. Ct. 1448, 39 L. Ed. 2d 492, 1974 U.S. LEXIS 1364 (1974).

Gas charges.

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. D.C. Code 1940, §§ 43-301, 43-401, 43-705, 43-706. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

In action by gas utility challenging Public Service Commission decision modifying formula for allocation of certain administrative and general expenses to rate payers within District of Columbia, evidence including testimony of Commission accountant that use of labor costs to allocate expenses forced District to bear a disproportionate burden of those expenses was sufficient that Commission's adoption of "modified Massachusetts formula," based on average of percentage share of labor costs, therm sales and plant in service, was not unreasonable, arbitrary or capricious and was in accordance with reliable, probative, and substantial evidence. D.C. Code 1981, §§ 1-1509(e), 43-906. Washington Gas Light Co. v. Public Service Com., 483 A.2d 1164, 1984 D.C. App. LEXIS 528 (1984).

Although under new flexible natural gas rate structure a loss of interruptible sales would result in higher rates for firm customers, Public Service Commission's decision in that regard was not unreasonable as it provided for Commission review of monthly rate changes and linking of earnings to net interruptible revenues, i.e., utility could keep 20% of net revenue from interruptible sales as earnings, would mitigate fear that utility might set rates at an undesirable level. D.C. Code 1981, § 43-906. Office of People's Counsel v. Public Service Com., 482 A.2d 404, 1984 D.C. App. LEXIS 507 (1984).

Public Service Commission departure from policy of using a five-year average as measure of uncollectible accounts was justified in natural gas rate case considering dramatic increase in uncollectibles particularly with master-metered apartments under new law prohibiting a utility from terminating gas service to such apartment buildings without first giving tenants an opportunity to receive service in their own names. D.C. Code 1981, §§ 43-542, 43-906. Office of People's Counsel v. Public Service Com., 482 A.2d 404, 1984 D.C. App. LEXIS 507 (1984).

Public Service Commission considered all relevant factors concerning marginal cost issue and its decision rejecting consumer advocate's proposal for pricing based on wellhead price and adopting rolled-in average pipeline price as marginal commodity cost was reasonable, explained and supported. D.C. Code 1981, § 43-906. Office of People's Counsel v. Public Service Com., 482 A.2d 404, 1984 D.C. App. LEXIS 507 (1984).

Recognition of a tax deduction attributable to short-term debt in prior natural gas rate case did not establish a practice of including such a deduction in every case where prior case had included short-term debt only as a substitute for postponed debt interest deduction and not for its own sake and there was no postponed debt issue excluded from rate structure in instant proceeding. D.C. Code 1981, § 43-906. Office of People's Counsel v. Public Service Com., 482 A.2d 404, 1984 D.C. App. LEXIS 507 (1984).

Although in considering request for an attrition allowance by a natural gas utility a "trend" cannot be established merely by aggregating all of the data for a preceding ten-year period, without some attention being given to patterns evidenced by data in most recent years, such is not to say that data for the most recent year always reflects an accurate projection of future trend and Public Service Commission adequately explained its reasons for viewing the latest year data, i.e., that in latest year the utility earned 98.75% of its authorized rate of return and that its operating ratio in that year was lower than in any other previous eight years, as a deviation from an established trend of attrition rather than as a signal that attri-

tion was no longer a problem. D.C. Code 1981, § 43-906. Office of People's Counsel v. Public Service Com., 482 A.2d 404, 1984 D.C. App. LEXIS 507 (1984).

Since relationship between average net investment and operating income closely parallels the relationship between a utility's rate base and its earned rate of return, which lies at the heart of the attrition phenomenon, Public Service Commission reliance on the "average net investment versus growth in net operating income" factor did not render attrition finding unreasonable, arbitrary or capricious. D.C. Code 1981, § 43-906. Office of People's Counsel v. Public Service Com., 482 A.2d 404, 1984 D.C. App. LEXIS 507 (1984).

In addressing issues of natural gas ratemaking theory and methodology the reviewing court's task was limited to determining whether the Public Service Commission took into account all the relevant factors and no others as well as ensuring that the methodology was sufficiently explained to reveal its effect on the reasonableness of the overall decision. D.C. Code 1981, § 43-906. Office of People's Counsel v. Public Service Com., 482 A.2d 404, 1984 D.C. App. LEXIS 507 (1984).

When a finding of attrition is supported by substantial evidence in a natural gas ratemaking proceeding, the reviewing court will not set it aside simply because the Public Service Commission has not explicitly considered and ruled out every possible alternative explanation for the utility's revenues. D.C. Code 1981, § 43-906. Office of People's Counsel v. Public Service Com., 482 A.2d 404, 1984 D.C. App. LEXIS 507 (1984).

It was not error to grant natural gas utility an attrition allowance on ground that an adjustment therefor was built into overall rate of return authorized as result of use of discount cash flow analysis in calculating cost of equity capital and Commission did not act unreasonably in failing to make an express finding as to whether its DCF analysis accounted for attrition before ruling on appropriateness of a forward-looking rate base. D.C. Code 1981, § 43-906. Office of People's Counsel v. Public Service Com., 482 A.2d 404, 1984 D.C. App. LEXIS 507 (1984).

Public Service Commission's use of lead-lag methodology in calculating cash working capital allowance on gas company's application for rate increase was entitled to deference and, consequently, Commission did not err in refusing to reduce cash working capital allowance by amount of incremental income taxes associated with increased revenues from rate increase. D.C. Code 1981, § 43-906. Washington Gas Light Co. v. Public Service Com., 452 A.2d 375, 1982 D.C. App. LEXIS 476 (1982), writ of certiorari denied by 462 U.S. 1107, 103 S. Ct. 2454, 77 L. Ed. 2d 1334, 1983 U.S. LEXIS 419, 51 U.S.L.W. 3871 (1983).

In general.

Scope of Court of Appeals' review of Public Service Commission (PSC) order is narrowest judicial review in field of administrative law. D.C. Code 1981, § 43-906. Watergate E. v. District of Columbia Pub. Serv. Comm'n, 662 A.2d 881, 1995 D.C. App. LEXIS 137 (1995).

Judicial review of order of Public Utilities Commission is limited to questions of law, including constitutional questions, and findings of fact by Commission shall be conclusive unless they are unreasonable, arbitrary, or capricious; review of Commission's order is narrowest judicial review in field of administrative law. D.C. Code 1981, §§ 43-905, 43-906. People's Counsel of District of Columbia v. Public Service Com., 472 A.2d 860, 1984 D.C. App. LEXIS 316 (1984).

In reviewing Public Service Commission (PSC) order, Court of Appeals is bound by Commission's findings of fact if supported by substantial evidence. D.C. Code 1981, § 43-906. Watergate E. v. District of Columbia Pub. Serv. Comm'n, 662 A.2d 881, 1995 D.C. App. LEXIS 137 (1995).

Role of the court in reviewing a decision of the Public Service Commission in a rate hearing is to ensure that the Commission has respected procedural requirements, has made findings based on substantial evidence, and has applied the correct legal standards to its substantive deliberations. D.C. Code 1981, § 43-906. United States v. Public Service Com., 465 A.2d 829, 1983 D.C. App. LEXIS 461 (1983).

Scope of Court of Appeals' review of Public Service Commission orders is limited. D.C. Code 1981, § 43-906. Bell Atlantic-Washington v. Public Serv. Comm'n, 655 A.2d 1231, 1995 D.C. App. LEXIS 56 (1995).

Language of United States Supreme Court decision defining review power over rate order of Federal Power Commission, declaring judicial inquiry at an end if total effect of rate order cannot be said to be unjust and unreasonable even though method employed to reach such result may contain infirmities, was applicable in determining Court of Appeals' scope of review over Public Service Commission rate order, since Court of Appeals' review power over PSC was comparable to authority vested in federal courts to review Federal Energy Regulatory Commission orders. D.C. Code 1981, § 43-906. Washington Gas Light Co. v. Public Service Com., 452 A.2d 375, 1982 D.C. App. LEXIS 476 (1982), writ of certiorari denied by 462 U.S. 1107, 103 S. Ct. 2454, 77 L. Ed. 2d 1334, 1983 U.S. LEXIS 419, 51 U.S.L.W. 3871 (1983).

Court of Appeals, in reviewing order of Public Service Commission, must examine entire re-

cord to decide whether the findings are supported by substantial evidence and whether Commission could thoroughly and reasonably find the facts as it did. D.C. Code §§ 43-705, 43-706. Apartment House Council, Inc. v. Public Service Com., 332 A.2d 53, 1975 D.C. App. LEXIS 299 (1975).

Presumptions and burden of proof.

Party seeking on judicial review to overturn Public Service Commission order carries heavy burden of demonstrating clearly and convincingly fatal flaw in action taken; simply proposing valid alternative to actions taken by Commission is not enough. D.C. Code 1981, § 43-906. Bell Atlantic-Washington v. Public Serv. Comm'n, 655 A.2d 1231, 1995 D.C. App. LEXIS 56 (1995).

Burden is on opponent to show that telephone rate order of the Public Service Commission is unlawful because it is unjust and unreasonable in its consequences. Atlantic Tel. Co. v. Public Service Com., 390 A.2d 439, 1978 D.C. App. LEXIS 489 (1978).

In reviewing rate order of District of Columbia Public Service Commission, determination of reviewing court must focus on whether result reached is arbitrary, and the appealing party bears burden of clearly demonstrating arbitrary action, which burden cannot be met by advancing alternative techniques from which Commission could have chosen. D.C. Code §§ 43-704 to 43-710, 43-706. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

Orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power carried presumption of validity, and those who would upset the rate orders had heavy burden of making a convincing showing that orders were invalid because unjust and unreasonable. D.C. Code 1940, §§ 43-705, 43-706. Leeman v. Public Utilities Commission of District of Columbia, 104 F.Supp. 553, 1952 U.S. Dist. LEXIS 4351 (D.D.C1952).

Even as to administrative agencies generally, the "arbitrary and capricious" standard of review is highly deferential, and the Court of Appeals presumes the validity of agency action. Wash. Gas Energy Servs., Petitioner v. D.C. PSC, 924 A.2d 296, 2007 D.C. App. LEXIS 236 (2007).

The party seeking to reverse an order of the Public Service Commission bears the burden of demonstrating that the order is unreasonable, arbitrary, or capricious by demonstrating clearly and convincingly a fatal flaw in the action taken. Wash. Gas Light Co. v. D.C. PSC, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

In light of Public Service Commission's (PSC) expertise, its rate orders are presumptively valid, and petitioner challenging order carries heavy burden of demonstrating clearly and convincingly a fatal flaw in action taken. D.C. Code 1981, §§ 43-905(a), 43-906. Potomac Elec. Power Co. v. Public Serv. Comm'n., 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

Rate-making orders of the Public Service Commission are presumptively valid and, unless an objecting utility can carry its heavy burden of demonstrating that a fatal flaw exists in the action taken, those orders will not be disturbed by a reviewing court. D.C. Code 1981, § 43-906. United States v. Public Service Com., 465 A.2d 829, 1983 D.C. App. LEXIS 461 (1983).

Though party challenging utility rate increase must make "convincing showing" of unreasonableness in rate order to enable the Court of Appeals to set aside that order, mere failure to carry that burden will not mandate affirmance of the order; the Public Service Commission must carry its own burden of explaining its actions fully and clearly. D.C. Code 1981, § 43-906. People's Counsel of District of Columbia v. Public Service Com., 462 A.2d 1105, 1983 D.C. App. LEXIS 424 (1983).

Questions of fact.

Allocation of percentage of systemwide public utility rate increase as between Maryland and District of Columbia was question of fact peculiarly within expertise of District of Columbia Public Service Commission. D.C. Code §§ 43-401, 43-704 to 43-710, 43-706. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

Questions of law.

Court of Appeals had jurisdiction to review Public Service Commission's decision to deny public gas utility's proposal to close service center, which made it harder for customers to pay their gas bills; utility's challenges on appeal, including that the Commission acted without authority, impermissibly interfered in utility's management decisions regarding its operations, denied it procedural safeguards, and reached conclusions unsupported by substantial evidence, presented questions of law rather than public policy. Wash. Gas Light Co. v. D.C. PSC, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

Ratemaking authority.

It is Public Service Commission (PSC), not Court of Appeals, which has responsibility for setting utility rates and establishing rate designs. D.C. Code 1981, § 43-906. Watergate E. v. Public Serv. Comm'n, 665 A.2d 943, 1995 D.C. App. LEXIS 180 (1995).

Where District of Columbia Public Service Commission, in including plant under construction in rate base, chose between alternatives and achieved reasonable result, its findings could not be disturbed. D.C. Code §§ 43-704 to

43-710, 43-706. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

If Court of Appeals concludes that Public Service Commission (PSC), in its ratemaking responsibilities, has arrived at fair balance between competing consumer and investor interests, and if there is substantial evidence in record to support Commission's findings, Court of Appeals must affirm Commission's rate determinations. D.C. Code 1981, § 43-906. Watergate E. v. Public Serv. Comm'n, 665 A.2d 943, 1995 D.C. App. LEXIS 180 (1995).

Court of Appeals may not substitute its judgment for that of Public Service Commission (PSC) in fulfilling its ratemaking responsibilities, and Court's review of utility rate decisions by Commission is narrowest judicial review in field of administrative law. D.C. Code 1981, § 43-906. Watergate E. v. Public Serv. Comm'n, 665 A.2d 943, 1995 D.C. App. LEXIS 180 (1995).

By statutory provision governing scope of Court of Appeals' review of Public Service Commission (PSC) order or decision, Congress vested sole ratemaking authority in expertise of Commission. D.C. Code 1981, § 43-906. Potomac Elec. Power Co. v. Public Serv. Comm'n., 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

Judicial review of basic ratemaking principles with respect to marginal cost base, time of day pricing adopted by Public Service Commission for large demand customers of electric utility, without considering specific TOD rates, would not impermissibly interfere with administrative decision-making process and was appropriate given fact that issue was fit for judicial decision and that parties would suffer hardship without judicial review. Metropolitan Washington Bd. of Trade v. Public Service Com., 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

In exercising its rate-making responsibility, Public Service Commission is not bound to use any particular methodology, nor is it bound to adopt any particular alternative proposed. D.C. Code § 43-706. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

Reasonableness of decision.

Public Service Commission (PSC) rule adopting revenue-based formula for assessing unregulated competitive electric suppliers, competitive natural gas suppliers, and competitive local exchange carriers (CLEC) was not unreasonable, arbitrary, or capricious. Wash. Gas Energy Servs., Petitioner v. D.C. PSC, 924 A.2d 296, 2007 D.C. App. LEXIS 236 (2007).

In reviewing a Public Service Commission order, the court must determine whether its overall effect is just and reasonable and whether the Commission has respected procedural requirements, has made findings based on substantial evidence, and has applied the correct legal standards to its substantive deliberations. Wash. Gas Light Co. v. D.C. PSC, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

If findings of fact by the Public Service Commission (PSC) are not based on evidence that a reasonable mind would accept as adequate, they are "unreasonable, arbitrary, or capricious" within the meaning of statute making Commission's findings of fact conclusive unless they are unreasonable, arbitrary, or capricious. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

Review of Public Service Commission's issuance of deposit orders assessing certain expenses of the Commission and the Office of People's Counsel against utilities is limited to a determination of whether the Commission's decision is unreasonable, arbitrary, or capricious. D.C. Code 1981, §§ 43-612(a), 43-906. Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

Court of Appeals must ascertain that, in striking balance between competing consumer and investor interests, Public Service Commission has given reasoned consideration to each of the pertinent factors. D.C. Code 1973, § 43-706. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

Even if court disagrees with Public Service Commission, if the Commission has fully and clearly explained what it does and why it does it, and agency decision is supported by substantial evidence, court, upon finding that Commission order is reasonable in its overall effect, should sustain order. D.C. Code 1973, § 43-706. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

Remand.

Remand for reconsideration of decision approving telephone company's tariff amendment permitting customers with home-based businesses to pay residential rates, if the predominant or primary use was domestic, was required by Public Service Commission's (PSC) acts of misreading record and making two factual findings unsupported by substantial evidence; the PSC mistakenly stated that the company estimated a benefit to only a small number of home-based business customers and that home-based business customers receiving residential rates could not be listed in the Yellow Pages. Office of the People's Counsel v.

PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

Public Service Commission's deposit orders assessing expenses of the Office of People's Counsel against electric power company were required to be remanded, where the orders contained no statement of reasons supporting the allowance of the expenses. D.C. Code 1981, §§ 43-612(a), 43-906. Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

Review.

Judicial review of the Public Service Commission (PSC) orders is limited to questions of law, including constitutional questions, and the findings of fact by the PSC shall be conclusive unless it shall appear that such findings of the PSC are unreasonable, arbitrary, or capricious. District of Columbia v. D.C. PSC, 963 A.2d 1144, 2009 D.C. App. LEXIS 170 (2009).

Steam power.

Evidence supported Public Service Commission's (PSC) finding that steam and chilled water facility at high-rise building complex was prudently managed by steam, chilled water, and natural gas utility, despite contentions that facility was overstaffed and that costs for outside labor were excessive, in Commission order granting utility's request to change utility rate design for steam and chilled water customers in complex; enhanced maintenance was necessary due to age of facility, and outside contractors were used only when required expertise for repair and maintenance were not available in-house. D.C. Code 1981, § 43-906. Watergate E. v. Public Serv. Comm'n, 665 A.2d 943, 1995 D.C. App. LEXIS 180 (1995).

Sufficient economic justification existed for use of separate cost pass-through rate methodology for steam and chilled water service to high-rise building complex so as to support Public Service Commission (PSC) order granting request by steam, chilled water, and natural gas utility to change utility rate design for steam and chilled water customers in complex; utility's previous income from complex customers had been less than cost of providing service and new rate design would enable utility to avoid future deficits and had built-in protections against erratic or arbitrary rate increases. D.C. Code 1981, § 43-906. Watergate E. v. Public Serv. Comm'n, 665 A.2d 943, 1995 D.C. App. LEXIS 180 (1995).

Public Service Commission (PSC) did not improperly disregard its policy of gradualism in setting new cost pass-through rate design for steam, chilled water, and natural gas utility's steam and chilled water service to high-rise building complex, which would result in 25% rate increase for such service; Commission merely recognized that, in this particular case, need for gradualism was largely outweighed by other considerations, including need to ensure that utility's complex customers would pay their fair share of utility costs, and Commission also built into new rate design several mechanisms intended to guard against abrupt or arbitrary rate increases. D.C. Code 1981, § 43-906. Watergate E. v. Public Serv. Comm'n, 665 A.2d 943, 1995 D.C. App. LEXIS 180 (1995).

Public Service Commission's (PSC) determination, that steam, chilled water, and natural gas utility's subsequent natural gas interruptible rate schedule replaced prior similar rate schedule for purposes of fuel adjustment governing steam and chilled water service rate, was not in essence factual finding but, rather, legal conclusion which Court of Appeals would sustain if it was reasonable and based upon factors within Commission's expertise. D.C. Code 1981, § 43-906. Watergate E. v. District of Columbia Pub. Serv. Comm'n, 662 A.2d 881, 1995 D.C. App. LEXIS 137 (1995).

Public Service Commission (PSC) reasonably determined that steam, chilled water, and natural gas utility's subsequent gas interruptible rate schedule replaced prior similar rate schedule for purposes of fuel adjustment governing steam and chilled water service rate, and that notice in rate case in which interruptible rate change was approved adequately informed steam and chilled water customers that their rates might be affected; PSC had made clear that commodity charges for steam and chilled water service were based on interruptible rate, PSC took into account utility's provision of chilled water and steam in determining utility's revenue need in case involving interruptible rate, and separate contemporary steam and chilled water case did not deal with interruptible rate issue. D.C. Code 1981, § 43-906. Watergate E. v. District of Columbia Pub. Serv. Comm'n, 662 A.2d 881, 1995 D.C. App. LEXIS 137 (1995).

Telecommunications.

Public Service Commission acted reasonably in ordering telephone company in rate case to adjust depreciation expense of its associated equipment for rate-making purposes, where company had based depreciation expense on lives of analog switches, and substantial uncontested evidence supported Commission's finding that digital switches were more accurate than analog switches as indicators of remaining life of associated equipment. D.C. Code 1981, § 43-906. Bell Atlantic-Washington v. Public Serv. Comm'n, 655 A.2d 1231, 1995 D.C. App. LEXIS 56 (1995).

Public Service Commission in rate case properly placed on telephone company, a subsidiary of telecommunications regional holding company, burden to prove holding company did not control or manipulate telephone company's cap-

ital structure, where details of telephone company's financial relationship to holding company were crucial to determination of which capital structure should be used for rate-making purposes, telephone company was in best position to provide Commission with that information, and Commission's rulings in prior cases had plainly stated what Commission expected of telephone company in that respect. D.C. Code 1981, § 43-906. Bell Atlantic-Washington v. Public Serv. Comm'n, 655 A.2d 1231, 1995 D.C. App. LEXIS 56 (1995).

Public Service Commission's findings of actual and potential manipulation of subsidiary telephone company's capital structure by its parent telecommunications holding company were not unreasonable, arbitrary, or capricious in subsidiary's rate case, in which Commission used parent's, rather than subsidiary's, capital structure in determining subsidiary's rate of return, where parent set debt ratio ranges within which subsidiary was expected to remain, percentage of equity in parent's capital structure was significantly lower than that in subsidiary's capital structure, and use of parent's capital structure did not lead to significant reduction in subsidiary's revenues. D.C. Code 1981, § 43-906. Bell Atlantic-Washington v. Public Serv. Comm'n, 655 A.2d 1231, 1995 D.C. App. LEXIS 56 (1995).

In examining rate design portion of Public Service Commission's grant of increase of 10.9 million dollars to telephone company, Court of Appeals not only had to determine whether increase's overall impact was just and reasonable but also whether Commission made findings based on substantial evidence and applied correct legal standards to its substantive deliberations. D.C. Code 1981, §§ 43-905, 43-906. General Services Admin. v. Public Service Com., 469 A.2d 1238, 1983 D.C. App. LEXIS 530 (1983).

Public Service Commission, which heard extensive testimony, considered numerous cost studies and made in-depth analysis of telephone company's proposed reduction of basic service rates as well as impact of substantial increases proposed by telephone company for vertical and private line services, fully explained rate design it adopted in connection with its grant of increase of 10.9 million dollars to telephone company and basic service, vertical and private line rates it adopted represented just and reasonable rates. D.C. Code 1981, §§ 43-905, 43-906. General Services Admin. v. Public Service Com., 469 A.2d 1238, 1983 D.C. App. LEXIS 530 (1983).

In view of evidence that telephone company's forecasts in past had proved accurate, that Public Service Commission auditors were permanently assigned to telephone company's premises and continuously audited books which were maintained in accordance with Commission-prescribed accounting system and that company's expert testified that 1972 forecast was developed in ordinary course of business as part of normal budgetary process, Commission erred in refusing, in rate-making proceeding, to consider company's 1972 forecast. D.C. Code § 43-706. Telephone Users Asso. v. Public Service Com., 304 A.2d 293, 1973 D.C. App. LEXIS 263 (1973), writ of certiorari denied by 415 U.S. 933, 94 S. Ct. 1448, 39 L. Ed. 2d 492, 1974 U.S. LEXIS 1364 (1974).

Where attrition was claimed, attrition being condition which can only be exemplified by showing trend over series of years, Public Service Commission erred in refusing, in rate-making case, to consider telephone company's evidence for years 1966 through 1969 on ground that whatever attrition occurred during 1966-1969 period had been recognized and allowed for in decision in previous rate case. D.C. Code § 43-706. Telephone Users Asso. v. Public Service Com., 304 A.2d 293, 1973 D.C. App. LEXIS 263 (1973), writ of certiorari denied by 415 U.S. 933, 94 S. Ct. 1448, 39 L. Ed. 2d 492, 1974 U.S. LEXIS 1364 (1974).

Weight and sufficiency of evidence.

When supported by substantial evidence, Public Utilities Commission's choice between two conflicting views will not be disturbed, even though court might justifiably have reached a different conclusion had the matter been before it de novo. D.C. Code 1940, §§ 43-706, 43-709. Washington, Marlboro & Annapolis Motor Lines v. Public Utilities Commission of District of Columbia, 114 F.Supp. 328, 1952 U.S. Dist. LEXIS 4612 (D.D.C1952).

Evidence was sufficient to support Public Service Commission's decision to deny public gas utility's request to close certain customer service center, which would have made it more difficult for customers to pay their gas bills; there was evidence that alternative payment locations would be of limited use, there was evidence that suggested options of paying by phone or through the Internet were not available to many customers, there was evidence those alternatives imposed additional costs on customers, and there was evidence that customers which availed themselves of alternative payment locations and options would not have access to customer information about their accounts. Wash. Gas Light Co. v. D.C. PSC, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

Regardless of the issue or the type of proceeding, when the Public Service Commission (PSC) makes factual findings based on the record before it, review by the Court of Appeals extends to whether those findings are supported by substantial evidence. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

If the Public Service Commission's (PSC) findings of fact are supported, then the substantial evidence test is satisfied so long as the Commission fully and clearly explains its decision and demonstrates a rational connection between facts found and the choice made. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

On review of Public Service Commission order, Court of Appeals must affirm as long as there is substantial evidence to support reasoned conclusion of Commission. D.C. Code 1981, § 43-906. Bell Atlantic-Washington v. Public Serv. Comm'n, 655 A.2d 1231, 1995 D.C. App. LEXIS 56 (1995).

§ 34-607. Orders to remain in force pending appeal; suspension of order.

All orders and decisions of the Commission shall remain in full effect, except as provided in § 34-604 hereof, unless and until they are suspended, superseded, or rescinded by the Commission or are vacated by lawful order of the District of Columbia Court of Appeals; provided, that if in any petition made to the said Court appealing from an order or decision of the Commission it be alleged that substantial and irreparable property loss would be occasioned to the petitioner by the operation of the said order pending the determination of the said appeal, the Court shall set a time and place for hearing upon the said allegation after not less than 3 days notice to the Commission (during which period the execution of the order or decision shall be stayed), and the said Court may then, upon a clear showing of the irreparable and substantial property loss as alleged, suspend the effective date of the said order. No such suspension shall be for a greater period than 60 days without further order after notice or hearing by the Court. In the event of the issuance of an order suspending the operation of any order of the Commission, the Court may include therein such provision as it deems advisable for the preservation of records or accounts and the impounding or otherwise securing of moneys necessary to give effect to the order of the Commission in the event the said order is sustained.

(Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 67; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 588, Pub. L. 91-358, title I, § 168(a)(3).)

Prior Codifications. — 1981 Ed., § 43-907. 1973 Ed., § 43-707.

Editor's notes. — Former § 43-910 1981 Ed., 49 Stat. 885, ch. 742, § 4, provided that if any provision this section or the application to any person or circumstances is held invalid, the invalidity of the remainder of said sections and of the application of such provision to other persons and circumstances shall not be affected thereby.

CASE NOTES

In general.

High profits of electric company and alleged fact that Public Utilities Commission had not been as vigilant as it might have been in driving down the company's rates did not establish an error of law requiring judicial remedy and did not justify retrospectively holding invalid rate schedules authorized by the Commission over a course of many years. U.S. v. Public Utilities Commission of District of Columbia, 158 F.2d 533, 1946 U.S. App. LEXIS 3174 (1946).

§ 34-608. Authority of Commission to rescind its order after appeal is filed.

The Commission may at any time, rescind, alter, modify, or amend its order. If, after appeal is filed, the Commission shall rescind the order or decision appealed from, the appeal shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order or decision shall take the place of the original order and the Court shall proceed thereon as though the late order had been made by the Commission in the first instance.

(Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 69; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2.)

Section references. — This section is referred to in § 34-609.

Prior Codifications. — 1981 Ed., § 43-908. 1973 Ed., § 43-709.

Editor's notes. — Former § 43-910 1981 Ed., 49 Stat. 885, ch. 742, § 4, provided that if any provision this section or the application to any person or circumstances is held invalid, the invalidity of the remainder of said sections and of the application of such provision to other persons and circumstances shall not be affected thereby.

§ 34-609. Method of review exclusive.

The method of review of the orders and decisions of the Commission provided by §§ 34-604 to 34-608, herein, shall be exclusive.

(Mar. 4, 1913, ch. 150, § 8, par. 69a; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2.)

Prior Codifications. — 1981 Ed., § 43-909. 1973 Ed., § 43-710.

Editor's notes. — Former § 43-910 1981 Ed., 49 Stat. 885, ch. 742, § 4, provided that if any provision this section or the application to any person or circumstances is held invalid, the invalidity of the remainder of said sections and of the application of such provision to other persons and circumstances shall not be affected thereby.

§ 34-610. Production of incriminating evidence compellable; immunity from prosecution.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this subtitle, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempted from prosecution or punishment for perjury; provided further, that the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath.

(Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 70.)

Cross references. — Utility failure to disclose, fraud, fines and penalties, see § 34-705.

Prior Codifications. — 1981 Ed., § 43-911. 1973 Ed., § 43-712.

§ 34-611. Commission to furnish certified copies of orders.

Upon application of any person the Commission shall furnish certified copies, under the seal of the Commission, of any order made by it, which shall be prima facie evidence of the facts stated therein.

(Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 71.)

Prior Codifications. — 1981 Ed., § 43-912. 1973 Ed., § 43-713.

CHAPTER 7. PENAL PROVISIONS.

Subchapter I. General

Sec.
34-701. False statements in securing approval for stock issue.
34-702. Demanding or receiving greater or less than established rates.
34-703. Reduced rates for consumer furnishing facilities prohibited.
34-704. Rebates.
34-705. Failure or refusal to furnish information; furnishing false information; failure to keep proper accounts.
34-706. Failure to perform duty or obey Commission order; violation of pipeline safety regulation.
34-707. Destruction of apparatus or appliance of Commission.
34-708. Each day's default to constitute separate and distinct offense.
34-709. Commission authorized to regulate rates.
34-710. Fines, penalties and forfeitures to be paid into Treasury.
34-711. Rights, penalties and forfeitures not released; penalties and forfeitures cumulative.

Subchapter II. Prosecution for Violation of Public Service Commission Rules

34-731. Prosecution for violation of rules.
34-732. Construction of §§ 34-706 and 34-731.

Subchapter I. General.

§ 34-701. False statements in securing approval for stock issue.

Each and every director, president, secretary, or other official of any such public utility who shall make any false statement to secure the issue of any stock, certificate of stock, bond, mortgage, or other evidence of indebtedness, or who shall, by false statement knowingly made, procure of the Commission the making of the certificate herein provided, or issue, with knowledge of such fraud, negotiate, or cause to be negotiated, any such stock, certificate of stock, bond, mortgage, or other evidence of indebtedness in violation of this subtitle, shall be guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than $1,000 or by imprisonment for a term of not less than 1 year, or by both such fine and imprisonment, in the discretion of the court.

(Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 80.)

Prior Codifications. — 1981 Ed., § 43-301. 1973 Ed., § 43-901.

§ 34-702. Demanding or receiving greater or less than established rates.

If any public utility or any agent or officer thereof shall, directly or indirectly, by any device whatsoever, or otherwise, charge, demand, collect, or receive from any person, firm, or corporation a greater or less compensation for any service rendered or to be rendered by it in or affecting or relating to the conduct of a street railroad or street railroad corporation, common carrier, gas plant, gas company, electric plant, electric company, telephone line, telephone corporation, telegraph line, or telegraph corporation, or pipeline company, or to the production, transmission, delivery, or furnishing of heat, light, water, or power, or the conveyance of telephone or telegraph messages, or for any service in connection therewith than that prescribed in the public schedules or tariffs

then in force or established as provided herein, or than it charges, demands, collects, or receives from any other person, firm, or corporation other than one conducting a like business for a like and contemporaneous service, such public utility shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be a misdemeanor and unlawful, and upon conviction thereof shall forfeit and pay to the District of Columbia not less than $100 nor more than $1,000 for each offense; and such agent or officer so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $50 nor more than $100 for each offense.

(Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 81; May 9, 2000, D.C. Law 13-107, § 201(c), 47 DCR 1091; Mar. 16, 2005, D.C. Law 15-227, § 17(d), 51 DCR 10549.)

Prior Codifications. — 1981 Ed., § 43-302. 1973 Ed., § 43-902.

Effect of amendments. — D.C. Law 13-107 in lieu of the phrase "electric corporation, water power company," substituted "electric company".

D.C. Law 15-227 substituted "gas company" for "gas corporation".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(d) of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Temporary Act of 2001 (D.C. Law 14-13, July 10, 2001, law notification 48 DCR 6589).

Legislative history of Law 13-107. — Law 13-107, the "Retail Electric Competition and Consumer Protection Act of 1999," was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-208.

CASE NOTES

ANALYSIS

Due process of law.
Electricity.
Telecommunications.

Due process of law.

Procedure by which Public Service Commission adopted minimum production and transmission charges after issuance of its proposed opinion adopting marginal cost based, time of day rates for large commercial customers of electric utility did not constitute a deprivation of petitioners' statutory and due process rights. D.C. Code 1973, §§ 43-301, 43-410, 43-415, 43-416, 43-421, 43-422, 43-702, 43-902; U.S. Const. Amend. 14. Metropolitan Washington Bd. of Trade v. Public Service Com., 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

Electricity.

Decision of Public Service Commission to impose a minimum production and transmission charge after issuance of its proposed opinion adopting marginal cost based, time of day rates for large commercial customers of electric utility was supported by substantial evidence. D.C. Code 1973, §§ 43-301, 43-410, 43-415, 43-416, 43-421, 43-422, 43-702, 43-902. Metropolitan Washington Bd. of Trade v. Public Service Com., 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

Telecommunications.

The Public Service Commission acted within scope of powers implied in its authorizing legislation in approving expedited compliance review mechanism for reviewing telephone company's individual case basis tariff filings for internal telecommunications service customers; individual case basis tariff procedure developed by the PSC unfettered telephone company from restraints that harmed its competitive position in relation to unregulated competitors. D.C. Code 1981, §§ 43-103, 43-601(d), 43-902. Office of People's Counsel v. Public Service Com., 571 A.2d 206, 1990 D.C. App. LEXIS 48 (1990).

§ 34-703. Reduced rates for consumer furnishing facilities prohibited.

It shall be unlawful for any public utility to demand, charge, collect, or receive from any person, firm, or corporation less compensation for any service rendered or to be rendered by said public utility in consideration of the furnishing by said person, firm, or corporation of any part of the facilities incident thereto; provided, that nothing herein shall be construed as prohibiting any public utility from renting any facilities incident to the production, transmission, delivery or furnishing of heat, light, water, or power, or the supply of any liquid, steam, or air, through pipes or tubing, or the conveyance of telegraph or telephone messages, and paying a reasonable rental therefor; or as requiring any public utility to furnish any part of such appliances which are situated in and upon the premises of any consumer or user, except telephone station equipment upon the subscriber's premises, and, unless otherwise ordered by the Commission, meters, and appliances for measurements of any product or service.

(Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 82.)

Prior Codifications. — 1981 Ed., § 43-303. 1973 Ed., § 43-903.

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-702.

§ 34-704. Rebates.

It shall be unlawful for any person to solicit, accept, or receive any rebate, concession, or discrimination in respect to any service in or affecting or relating to any public utility or the production, transmission, delivery, or furnishing of heat, light, water, or power, or any liquid, steam, or air, or the conveying of telegraph or telephone messages within the District of Columbia by a public utility, or for any service in connection therewith whereby any such service shall, by any device whatsoever or otherwise, be rendered free or at a less rate than that named in the schedules and tariffs in force as provided in this subtitle, or whereby any service or advantage is received other than is in this subtitle specified. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $200 nor more than $1,000 for each offense.

(Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 83; May 9, 2000, D.C. Law 13-107, § 201(d), 47 DCR 1091.)

Prior Codifications. — 1981 Ed., § 43-304. 1973 Ed., § 43-904.

Effect of amendments. — D.C. Law 13-107 deleted "firm, or corporation" following "person" in the first and second sentence, deleted in the first sentence "District of Columbia" preceding ", or for any service", and inserted in its place "District of Columbia by a public utility".

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-702.

§ 34-705. Failure or refusal to furnish information; furnishing false information; failure to keep proper accounts.

Any officer, agent, or employee of any public utility who shall fail or refuse to fill out and return any blanks, as required by this subtitle, or shall fail or refuse to answer any question therein propounded, or shall knowingly or wilfully give a false answer to any such question, or shall evade the answer to any such question where the fact inquired of is within his knowledge, or who shall, upon proper demand, fail or refuse to exhibit to the Commission or any commissioner or any person authorized to examine the same, any book, paper, account, record, or memoranda of such public utility which is in his possession or under his control, or who shall fail to properly use and keep his system of accounting, or any part thereof, as prescribed by the Commission under this subtitle, or who shall refuse to do any act or thing in connection with such system of accounting when so directed by the Commission or its authorized representative shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $200 nor more than $1,000 for each offense, and a penalty of not less than $500 nor more than $2,000 shall, on conviction, be imposed on the public utility for each such offense when such officer, agent, or employee acted in obedience to the direction, instruction, or request of such public utility or any general officer thereof.

(Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 84.)

Prior Codifications. — 1981 Ed., § 43-305. 1973 Ed., § 43-905.

§ 34-706. Failure to perform duty or obey Commission order; violation of pipeline safety regulation.

(a) If any public utility shall violate any provision of this subtitle, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the Commission, or any judgment or decree made by any court upon its application, for every such violation, failure, or refusal such public utility shall forfeit and pay to the District of Columbia the sum of $5,000 for each such offense. In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any public utility acting within the scope of his employment and instructions shall in every case be deemed to be the act, omission, or failure of such public utility.

(b) Any person who violates any regulation issued by the Commission governing safety of pipeline facilities and the transportation of gas, shall be subject to a civil penalty as set forth in the Commission's regulations, Title 15 of the District of Columbia Municipal Regulations (15 DCMR), for each violation for each day that violation persists. Civil penalties established by the Commission shall not exceed maximum civil penalties established by federal laws and regulations governing the safety of pipeline facilities and the transportation of gas.

(c) Notwithstanding any other provision of law, the Commission may adjudicate the occurrence of a violation under this section and impose sanctions in accordance with its regulations. Any such civil penalty may be compromised by the Commission. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of such penalty when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the District of Columbia to the person charged or may be recovered in a civil action in the District of Columbia courts.

(d) In connection with a proceeding under this section, a public utility shall provide to the Commission access to any accounts, books, papers, and documents which the Commission considers necessary to resolve the matter.

(e)(1) Any public utility that fails to comply with regulations establishing reliability performance standards may be subject to a civil penalty of up to $100,000 for each violation.

(2) In determining the amount of a penalty, the Commission may consider the following:

(A) The public utility's previous violations, including the following:

(i) The gravity of the violations;

(ii) The duration of the violations; and

(iii) The number of violations.

(B) The gravity and duration of the current violation; and

(C) The public utility's good-faith attempt to achieve compliance with the regulations.

(3) A penalty imposed under this subsection shall not be passed on to ratepayers in rates or in any other manner by the public utility.

(4) The civil penalty set forth in this subsection shall apply only to regulations of the Public Service Commission designated as "reliability performance standards". To qualify as a reliability performance standard, a regulation must include the phrase "reliability performance standard adopted by the Public Service Commission".

(Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 85; Aug. 11, 1971, 85 Stat. 319, Pub. L. 92-94, § 1(b); Mar. 14, 1985, D.C. Law 5-153, § 3(f), 31 DCR 6440; May 21, 1992, D.C. Law 9-109, § 2, 39 DCR 2158; Apr. 12, 2005, D.C. Law 15-342, § 303(b), 52 DCR 2346; Sept. 24, 2010, D.C. Law 18-223, § 2222(b), 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 2082(a), 58 DCR 6226.)

Cross references. — Public service commission, powers and duties, see § 34-402.

Section references. — This section is referred to in §§ 34-731 and 34-732.

Prior Codifications. — 1981 Ed., § 43-306. 1973 Ed., § 43-906.

Effect of amendments. — D.C. Law 15-342 substituted "$5,000" for "$300".

D.C. Law 18-223, in subsec. (c), added the first sentence; and added subsec. (d).

D.C. Law 19-21 added subsec. (e).

Emergency legislation. — For temporary (90 day) amendment of section, see § 303(b) of Omnibus Utility Emergency Amendment Act of 2005 (D.C. Act 16-12, January 28, 2005, 52 DCR 2945).

For temporary (90 day) amendment of section, see § 2222(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 5-153. — Law 5-153 was introduced in Council and assigned Bill No. 5-225, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on October 23, 1984, and November 7, 1984, respectively. Disapproved by the Mayor on November 30, 1984, the Bill was reenacted by the Council on December 4, 1984, assigned Act No. 5-217 and transmitted to both Houses of Congress for review.

Legislative history of Law 9-109. — Law 9-109, the "Pipeline Safety Penal Provisions Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-339, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on February 4, 1992, and March 3, 1992, respectively. Signed by the Mayor on March 23, 1992, it was assigned Act No. 9-181 and transmitted to both Houses of Congress for its review. D.C. Law 9-109 became effective on May 21, 1992.

Legislative history of Law 15-342. — For Law 15-342, see notes following § 34-401.

Legislative history of Law 18-223. — Law 18-223, the "Fiscal Year 2011 Budget Support Act of 2010", was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Legislative history of Law 19-21. — Law 19-21, the "Fiscal Year 2012 Budget Support Act of 2011", was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Short title. — Short title: Section 2081 of D.C. Law 19-21 provided that subtitle I of title II of the act may be cited as "Public Service Commission Amendment Act of 2011".

References in text. — Regulations governing safety of pipeline facilities and transportation of gas are found at 15 DCMR 2398.

CASE NOTES

ANALYSIS

Construction and application.
Exhaustion of issue.
Review.

Construction and application.

Statute creating a sanction for public utilities that failed to obey an order of the Public Service Commission, or a judgment or decree made by a court upon the Commission's application, did not grant the Commission the authority to adjudicate a violation, and instead the Superior Court alone had authority to punish a public utility when it disregarded either the Commission's orders or those of a court; statute did not expressly grant the Commission the power to fine, statute specified a liquidated sum of damages, statute's use of the phrase "forfeit and pay" created an action of debt, and an action to recover a debt had to be brought in court. Wash. Gas Light Co. v. PSC of the Dist. of Columbia, 982 A.2d 691, 2009 D.C. App. LEXIS 502 (2009).

Exhaustion of issue.

Court of Appeals would address the merits of the issue of whether the Public Service Commission had the statutory authority, in a rate proceeding, to impose a forfeiture sanction on natural gas utility for failing to provide a complete unredacted copy of its contract with a third party as ordered by the Commission, or whether the Commission by statute was required to bring an action in Superior Court in order to impose the forfeiture sanction, in utility's appeal of the sanction, though utility failed to exhaust the issue in the proceedings before the Commission by failing to raise it in its motion for reconsideration filed with the Commission, as the alleged defect in the Commission's jurisdiction was so serious that it would wholly deprive the Commission of the power to act and the Commission would have arrogated a power not conferred on it. Wash. Gas Light Co. v. PSC of the Dist. of Columbia, 982 A.2d 691, 2009 D.C. App. LEXIS 502 (2009).

Review.

Court of Appeals would not defer to Public Service Commission's interpretation of statute, creating a sanction for public utilities that failed to obey an order of the Commission, or a judgment or decree made by a court upon the Commission's application, when determining whether the Commission or the Superior Court had the authority to adjudicate a violation of the statute in appeal by natural gas utility of forfeiture sanction for failing to provide in rate proceeding a complete unredacted copy of its

contract with a third party as ordered by the Commission, as the only reasonable interpretation of the statute was that it created a cause of action in the Superior Court. Wash. Gas Light Co. v. PSC of the Dist. of Columbia, 982 A.2d 691, 2009 D.C. App. LEXIS 502 (2009).

§ 34-707. Destruction of apparatus or appliance of Commission.

Any person who shall destroy, injure, or interfere with any apparatus or appliance owned or operated by or in charge of the Commission or its agent shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding $100 or imprisonment for a period not exceeding 30 days, or both.

(Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 86.)

Prior Codifications. — 1981 Ed., § 43-309. 1973 Ed., § 43-909.

§ 34-708. Each day's default to constitute separate and distinct offense.

Every day during which any public utility, or any officer, agent, or employee thereof, shall fail knowingly or willfully to observe and comply with any order or direction of the Commission, or to perform any duty enjoined by this section, shall constitute a separate and distinct violation of such order, or direction, or of this subtitle, as the case may be.

(Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 87.)

Prior Codifications. — 1981 Ed., § 43-310. 1973 Ed., § 43-910.

§ 34-709. Commission authorized to regulate rates.

Whenever, after hearing and investigation as provided in this subtitle, the Commission shall find that any rate, toll, charge, regulation, or practice of any public utility within the District of Columbia is unreasonable or discriminatory, it shall have the power to regulate, fix, and determine the same as provided in this subtitle.

(Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 88.)

Cross references. — Commission rate schedules, amendments, see § 34-602.

Rate investigations, see §§ 34-908 et seq.

Prior Codifications. — 1981 Ed., § 43-311. 1973 Ed., § 43-911.

CASE NOTES

In general.

In aid of process of rate making within jurisdiction of Public Utility Commission of the District of Columbia, Commission may make findings upon evidence concerning conditions and events beyond its regulatory jurisdiction if such conditions and events are thought to affect rates to be determined by Commission. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

The District of Columbia Public Utilities Commission's statement that return of less than four per cent was inadequate to maintain gas company in sound financial condition was

insufficient to support commission's conclusion that gas rates were reasonable, just and nondiscriminatory, where the commission adopted prudent investment theory of rate regulation but did not subject issue of rate of return to inquiry at the hearing. D.C. Code 1940, §§ 43-301, 43-705. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. D.C. Code 1940, §§ 43-301, 43-401, 43-705, 43-706. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

In fulfilling responsibility to set utility rates and establish rate designs, Public Utilities Commission must arrive at fair balance between competing consumer and investor interests. People's Counsel of District of Columbia v. Public Service Com., 472 A.2d 860, 1984 D.C. App. LEXIS 316 (1984).

§ 34-710. Fines, penalties and forfeitures to be paid into Treasury.

All moneys received from fines, forfeitures, and penalties shall be paid into the Treasury of the United States to the credit of the General Fund of the District of Columbia.

(Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 98; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18.)

Prior Codifications. — 1981 Ed., § 43-312. 1973 Ed., § 43-912.

§ 34-711. Rights, penalties and forfeitures not released; penalties and forfeitures cumulative.

This subtitle shall not have the effect to release or waive any right of action by the United States, or by the District of Columbia, or by any person, for any right, penalty, or forfeiture under any law of the United States or any regulation in force in the District of Columbia; and all penalties and forfeitures accruing under said chapters shall be cumulative, and a suit for any recovery of one shall not be a bar to the recovery of any other penalty.

(Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 93.)

Prior Codifications. — 1981 Ed., § 43-313. 1973 Ed., § 43-913.

Subchapter II. Prosecution for Violation of Public Service Commission Rules.

§ 34-731. Prosecution for violation of rules.

Prosecution for violation of any rule, order, or regulation issued, adopted, or approved by the Public Service Commission pursuant to this subtitle; § 50-2201.03(e), or Chapters 28 and 30 [repealed] of Title 47, shall be on information in the Superior Court of the District of Columbia, in the name of the District of Columbia, by the Corporation Counsel or any of his or her assistants. Any person, corporation, or public utility violating any rule, order, or regulation

shall, upon conviction, be fined not more than $10,000. With respect to orders, rules, or regulations made or adopted by the Public Service Commission under authority of this subtitle, this section shall be construed to apply only to the orders, rules, or regulations subject to the penalties specifically provided in § 34-706.

(Apr. 5, 1939, 53 Stat. 569, ch. 40, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207,§ 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Mar. 14, 1985, D.C. Law 5-153, § 4(a), 31 DCR 6440; Apr. 12, 2005, D.C. Law 15-342, § 302, 52 DCR 2346.)

Cross references. — Motor vehicles and traffic, rules and regulations, authority, see § 50-2201.03.

Public Service Commission, creation, powers and duties, see § 34-802.

Section references. — This section is referred to in § 34-1552.

Prior Codifications. — 1981 Ed., § 43-307. 1973 Ed., § 43-907.

Effect of amendments. — D.C. Law 15-342 substituted "$10,000" for "$300".

Emergency legislation. — For temporary (90 day) amendment of section, see § 302 of Omnibus Utility Emergency Amendment Act of 2005 (D.C. Act 16-12, January 28, 2005, 52 DCR 2945).

Legislative history of Law 5-153. — For legislative history of D.C. Law 5-153, see Historical and Statutory Notes following § 34-706.

Legislative history of Law 15-342. — For Law 15-342, see notes following § 34-401.

References in text. — Chapter 30 of Title 47, referred to in the first sentence, was repealed by D.C. Law 5-136, effective March 13, 1985.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-732. Construction of §§ 34-706 and 34-731.

The provisions of §§ 34-706 and 34-731 relating to the orders, rules, and regulations of the Public Service Commission may be enforced either as provided in § 34-706 or § 34-731.

(Apr. 5, 1939, 53 Stat. 569, ch. 40, § 2; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; Mar. 14, 1985, D.C. Law 5-153, § 4(b), 31 DCR 6440.)

Prior Codifications. — 1981 Ed., § 43-308. 1973 Ed., § 43-908.

Legislative history of Law 5-153. — For legislative history of D.C. Law 5-153, see Historical and Statutory Notes following § 34-706.

CHAPTER 8. PUBLIC SERVICE COMMISSION; MEMBERS; COUNSEL; EMPLOYEES.

Sec.
34-801. Members; eligibility; oath.
34-802. Quorum; investigations; rules and regulations.
34-803. Office of the General Counsel.
34-804. People's Counsel — Appointment, compensation, qualifications; personnel; duties.
34-805. People's Counsel.
34-806. Employees; expenses; expenditures.
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34-808. Orders for repairs; improvement in equipment, service.
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§ 34-801. Members; eligibility; oath.

The Public Service Commission of the District of Columbia shall be composed of 3 commissioners appointed by the Mayor by and with the advice and consent of the Council, except that the members (other than the Mayor of the District of Columbia) serving as commissioners of such Commission on January 1, 1975, by virtue of their appointment by the President, by and with the advice and consent of the Senate, shall continue to serve until the expiration of the terms for which they were so appointed. One of the 3 commissioners shall be designated as Chairperson of the Commission by the Mayor of the District of Columbia, with the advice and consent of the Council. Such designation shall continue for the length of the appointee's unexpired term or until otherwise terminated by the Mayor. The members first appointed by the Mayor, by and with the advice and consent of the Council, on or after January 2, 1975, shall serve until June 30, 1978. The Mayor may remove any commissioner for neglect of duty or misconduct in office. When the Mayor determines that any member has engaged in any neglect of duty or misconduct in office, he or she shall notify such member, in writing, of the charge against him or her and that such member has 10 days within which to request a hearing before the Council on such charge. If such member fails to request a hearing within 10 days after receiving such notice, then the Mayor may remove such member and appoint a new member. The hearing requested by a member may be either open or closed, as requested by such member. In the event such hearing is closed, the vote of the Council as a result of such hearing shall be taken at an open meeting of the Council. The Council shall begin such hearings within 60 calendar days after receiving notice from the Mayor indicating that a member has requested such a hearing. If two-thirds of the Council members vote to remove such member, then such member shall be removed. The Mayor may appoint a new member to serve until the expiration of the term of the member so removed. The Chairperson of the Commission shall serve as the chief administrative officer of the Commission. The terms of office of all successors shall expire 4 years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was

appointed shall be appointed only for the unexpired term of his predecessor. No commissioner shall, during his term of office, hold any other public office. The Chairperson shall receive a salary equivalent to that received by an employee compensated at grade 17, step 10 pursuant to subchapter VIII of Chapter 6 of Title 1. The Commissioners shall receive a salary equivalent to that received by an employee compensated at grade 17, step 8 pursuant to subchapter VIII of Chapter 6 of Title 1. The Mayor shall furnish the Public Service Commission with suitable offices and quarters. No person shall be eligible to the office of commissioner of the Public Service Commission of the District of Columbia who has not been a bona fide resident of the District of Columbia for a period of at least 3 years next preceding his appointment or who has voted or claimed residence elsewhere during such period. No person shall be eligible to the office of commissioner of the Public Service Commission who is, or who shall have been during a period of one year preceding his appointment, directly or indirectly interested in any public utility or other entity appearing before the Commission or in any stock, bond, mortgage, security, or contract of any public utility or entity, except for stocks that are part of a publicly listed mutual fund other than a utility-focused mutual fund. A person shall not be eligible for appointment as a commissioner if the person, at any time during the 5 years preceding appointment, personally served as an officer, director, owner, manager, partner, or legal representative of a public utility, affiliate, or direct competitor of a public utility. If any such commissioner shall voluntarily become so interested, his office shall ipso facto become vacant; and if any such commissioner shall become so interested otherwise than voluntarily he shall, within a reasonable time, divest himself of such interest, and if he fails to do so his office shall become vacant. Before entering upon the duties of his office each commissioner, the secretary of the Commission, the counsel of the Commission and every employee of said Commission shall take and subscribe the constitutional oath of office, and shall in addition thereto make oath or affirmation before and file with the clerk of the Superior Court of the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia.

(Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97(a); Dec. 15, 1926, 44 Stat. 920, ch. 8, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(39)(A); Dec. 24, 1973, 87 Stat. 811, Pub. L. 93-198, title IV, § 493(b); Jan. 3, 1975, 88 Stat. 2178, Pub. L. 93-635, § 17; Mar. 3, 1979, D.C. Law 2-139, § 3205(hhh), 25 DCR 5740; Oct. 24, 1981, D.C. Law 4-43, § 2, 28 DCR 4261; Apr. 12, 2005, D.C. Law 15-342, § 303(c), 52 DCR 2346; Mar. 2, 2007, D.C. Law 16-191, § 50, 53 DCR 6794.)

Cross references. — Agency heads, mayoral nomination, review and approval of Council, see § 1-523.01.

Applicability to actions pending on effective date, see § 34-406.

Contracts, whistleblower protection, "instrumentality" defined, see § 2-223.01.

General provisions, construction and severability of law, see § 34-403.

Government reorganization procedures, "agency" defined, see § 1-315.02.

Merit system, implementation task force, effective date provisions, see § 1-636.02.

Separability clause, see § 34-405.

Telecommunications competition, "Public Service Commission" defined, see § 43-1451.

Section references. — This section is referred to in §§ 34-804 and 34-2001.

Prior Codifications. — 1981 Ed., § 43-401. 1973 Ed., § 43-201.

Effect of amendments. — D.C. Law 15-342 substituted "The Chairperson shall receive a salary equivalent to that received by an employee compensated at grade 17, step 10 pursuant to subchapter VIII of Chapter 6 of Title 1. The Commissioners shall receive a salary equivalent to that received by an employee compensated at grade 17, step 8 pursuant to subchapter VIII of Chapter 6 of Title 1." for "Each of the commissioners shall receive a salary equivalent to that received by an employee compensated at the top level of grade 16 pursuant to subchapter XI of Chapter 6 of Title 1."; and substituted "No person shall be eligible to the office of commissioner of the Public Service Commission who is, or who shall have been during a period of one year preceding his appointment, directly or indirectly interested in any public utility or other entity appearing before the Commission or in any stock, bond, mortgage, security, or contract of any public utility or entity, except for stocks that are part of a publicly listed mutual fund other than a utility-focused mutual fund. A person shall not be eligible for appointment as a commissioner if the person, at any time during the 5 years preceding appointment, personally served as an officer, director, owner, manager, partner, or legal representative of a public utility, affiliate, or direct competitor of a public utility." for "No person shall be eligible to the office of commissioner of said Public Service Commission who is, or who shall have been during a period of 5 years next preceding his appointment, directly or indirectly interested in any public utility operating, owning, or having an interest in property in the District of Columbia; or in any stock, bond, mortgage, security, or contract of any such public utility."

D.C. Law 16-191 validated a previously made technical correction.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Public Service Commission Holdover Temporary Amendment Act of 2009 (D.C. Law 17-385, March 31, 2009, law notification 56 DCR 3451).

Emergency legislation. — For temporary (90 day) amendment of section, see §§ 303(c), 401 of Omnibus Utility Emergency Amendment Act of 2005 (D.C. Act 16-12, January 28, 2005, 52 DCR 2945).

For temporary (90 day) amendment of section, see § 2 of Public Service Commission Holdover Emergency Amendment Act of 2008 (D.C. Act 17-633, January 3, 2009, 56 DCR 659).

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-43. — Law 4-43 was introduced in Council and assigned Bill No. 4-156, which was referred to the Committee on Government Operations and the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 14, 1981, and July 28, 1981, respectively. Signed by the Mayor on August 6, 1981, it was assigned Act No. 4-78 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-342. — For Law 15-342, see notes following § 34-401.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 34-209.

Editor's notes. — Section 401 of D.C. Law 15-342 provided: "Sec. 401. Applicability. Sections 303(c)(1) and 307 shall apply as of October 1, 2004."

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

The Public Utilities Commission of the District of Columbia is the special agency created to perform in the first instance the relevant regulatory functions over public utility companies within its jurisdiction, and it may make orders, subject to court review, to carry out its decisions. D.C. Code 1951, §§ 43-201 et seq., 44-201 et seq. Public Utilities Commission of District of Columbia v. Capital Transit Co., 214 F.2d 242, 1954 U.S. App. LEXIS 2684 (C.A.D.C. 1954).

§ 34-802. Quorum; investigations; rules and regulations.

A majority of the commissioners shall constitute a quorum to do business, and any vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the Commission. Any investigation, inquiry, or hearing within the powers of the Commission may be made or held by any commissioner, whose acts and orders, when approved by the Commission, shall be deemed to be the order of the Commission. The Commission shall have power to adopt and publish rules and regulations for the administration of the provisions of this subtitle, including the conduct of its investigations, inquiries, hearings, and other proceedings.

(Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97(b); Dec. 15, 1926, 44 Stat. 921, ch. 8, § 1.)

Cross references. — Construction oversight and accounts, see § 34-1116.

Depreciation accounts, see § 34-1115.

Gas and electric meters, inspections, rules and regulations, see § 34-303.

Mayor, council and other officers, police power regulations, see § 1-303.03.

Measurement standards, rules and regulations, § 34-1120.

Public utility accidents, reporting and investigations, see § 34-401.

Rules and regulations, power of Commission to adopt, see § 34-902.

Street railways and bus lines, generally, see § 35-201 et seq.

Utility service, valuation and accounts, Commission oversight of individual rates and dividends, see § 34-1117.

Prior Codifications. — 1981 Ed., § 43-403. 1973 Ed., § 43-202.

Editor's Note Section 2 of An Act to alter the personnel of the Public Utilities Commission of the District of Columbia, and for other purposes, 44 Stat. 921 former § 43-404, 1981 Ed., provided that this section not be construed to invalidate certain acts of the prior Commission including those relating to orders or rules, complaints, inquiries or hearings, actions or proceedings.

CASE NOTES

In general.

The Public Utilities Commission of the District of Columbia is the special agency created to perform in the first instance the relevant regulatory functions over public utility companies within its jurisdiction, and it may make orders, subject to court review, to carry out its decisions. D.C. Code 1951, §§ 43-201 et seq., 44-201 et seq. Public Utilities Commission of District of Columbia v. Capital Transit Co., 214 F.2d 242, 1954 U.S. App. LEXIS 2684 (C.A.D.C. 1954).

Utility companies operating under public franchises and having monopolistic characteristics are subject to special regulation, and cases involving utility's operations are not governed by the ordinary rules applicable to judicial interference in the conduct of a business enterprise. D.C. Code 1951,§ 43-201 et seq. Public Utilities Commission of District of Columbia v. Capital Transit Co., 214 F.2d 242, 1954 U.S. App. LEXIS 2684 (C.A.D.C. 1954).

Public Utilities Commission of District of Columbia is merely administrative agency, vested with no legislative powers (Act March 4, 1913, § 8 [37 Stat. 974]). Patrick v. Smith, 45 F.2d 924, 1930 U.S. App. LEXIS 3746 (1930).

§ 34-803. Office of the General Counsel.

There is established within the Public Service Commission an Office of the General Counsel. The head of such Office shall be the General Counsel, who shall be appointed by and serve at the pleasure of the Commission. The Commission may, upon the recommendation of the General Counsel and within the limits of appropriations therefor, employ and fix the compensation of such other employees, including attorneys, in accordance with the provisions of subchapters VIII and IX of Chapter 6 of Title 1, as may be necessary to assist the General Counsel in carrying out his duties under this section. The duty of the General Counsel shall be, and he is authorized, to represent and appear for the Commission in all actions and proceedings under this section, or under or in reference to any act, order, or proceeding of the Commission, and, if directed to do so by the Commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence and prosecute all actions and proceedings directed or authorized by the Commission, and to expedite, in every way possible, final and just determination of all such actions and proceedings; to advise the Commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the Commission and of the members thereof, and generally to perform all duties and services as attorney and counsel which the Commission may reasonably require. The Commission may enforce its orders to any case by legal or equitable remedy in any court of competent jurisdiction, and it shall be the duty of the General Counsel to represent the Commission in every such proceeding. Notwithstanding the foregoing, it shall not be the duty of the General Counsel, nor is he authorized, to prosecute any criminal case for the imposition of any penalty or punishment provided for in this section.

(Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 91; Feb. 26, 1981, D.C. Law 3-124, § 2, 28 DCR 90.)

Prior Codifications. — 1981 Ed., § 43-405. 1973 Ed., § 43-204.

Legislative history of Law 3-124. — Law 3-124 was introduced in Council and assigned Bill No. 3-269, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 14, 1980 and November 25, 1980, respectively. Signed by the Mayor on December 22, 1980, it was assigned Act No. 3-331 and transmitted to both Houses of Congress for its review.

CASE NOTES

Construction with other laws.

District of Columbia Public Service Commission did not have Article III standing or parens patriae capacity standing to challenge district court's decision to allow regional telephone companies to participate in nontelecommunications markets and limited information transmission and storage activities; Commission's status as consumer or as regulator did not give it Article III standing, and Commission had not been authorized to bring parens patriae actions. U.S. Const. Art. 3, § 1 et seq.; Clayton Act, §§ 4C, 4G(1), as amended, 15 U.S.C. §§ 15c, 15g(1); D.C. Code 1981, § 43-405. United States v. Western Elec. Co., 900 F.2d 283, 1990 U.S. App. LEXIS 4888 (C.A.D.C. 1990), writ of certiorari denied by 498 U.S. 911, 111 S. Ct. 283, 112 L. Ed. 2d 238, 1990 U.S. LEXIS 5219, 59 U.S.L.W. 3277 (1990).

§ 34-804. People's Counsel — Appointment, compensation, qualifications; personnel; duties.

(a) There is hereby established within the Public Service Commission of the District of Columbia, established by § 34-801, an office to be known as the "Office of the People's Counsel." The Office shall be a party, as of right, in any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning any public utility operating in the District of Columbia.

(b) There shall be at the head of such Office the People's Counsel who shall be appointed by the Mayor of the District of Columbia, by and with the advice and consent of the Council of the District of Columbia, and who shall serve for a term of 3 years. The People's Counsel shall be entitled to receive compensation at the maximum rate for Level II of the Senior Executive Attorney Service, pursuant to §§ 1-608.53 and 1-608.58. No person shall be appointed to the position of People's Counsel unless that person is admitted to practice before the District of Columbia Court of Appeals. Before entering upon the duties of such office, the People's Counsel shall take and subscribe the same oaths as that required by the commissioners of the Commission, including an oath or affirmation before the Clerk of the Superior Court of the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia. The People's Counsel shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.

(c) The People's Counsel is authorized to employ or to retain and fix the compensation of employees or independent contractors, including attorneys, necessary to perform the functions vested in the People's Counsel by this section, and § 34-912, as amended by the Utility Regulatory Assessment Clarification Act of 1984, and prescribe their authority and duties.

(c-1) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Office of the People's Counsel unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the People's Counsel. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the Office of the People's Counsel for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The People's Counsel shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.

(d) The People's Counsel:

(1) Shall represent and appeal for the people of the District of Columbia at hearings of the Commission and in judicial proceedings in the District of

Columbia courts when these proceedings and hearings involve the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission;

(2) May represent and appeal for the people of the District of Columbia at proceedings before related federal regulatory agencies and commissions and federal courts when those proceedings involve the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission;

(3) May represent and appear for petitioners appearing before the Commission for the purpose of complaining in matters of rates or services;

(4) May investigate independently, or within the context of formal proceedings before the Commission, the services given by, the rates charged by, and the valuation of the properties of the public utilities under the jurisdiction of the Commission; and

(5) May develop means to otherwise assure that the interests of the users of the products of or services furnished by public utilities under the jurisdiction of the Commission are adequately represented in the course of proceedings before the Commission, federal or District of Columbia courts, or federal regulatory agencies and commissions involving those interests, including public information dissemination, consultative services, and technical assistance.

(e) In defining its positions while advocating on matters pertaining to the operation of public utility or energy companies, the Office shall consider the public safety, the economy of the District of Columbia, the conservation of natural resources, and the preservation of environmental quality.

(Jan. 2, 1975, 88 Stat. 1975, Pub. L. 93-614, § 1; Mar. 3, 1979, D.C. Law 2-139, § 3205(gg), 25 DCR 5740; Mar. 14, 1985, D.C. Law 5-153, § 2, 31 DCR 6440; Oct. 20, 2005, D.C. Law 16-33, § 3017, 52 DCR 7503; Feb. 6, 2008, D.C. Law 17-108, § 212(a), 54 DCR 10993; Aug. 15, 2008, D.C. Law 17-210, § 2, 55 DCR 6982; Oct. 22, 2008, D.C. Law 17-250, § 402, 55 DCR 9225; Mar. 25, 2009, D.C. Law 17-353, § 212, 56 DCR 1117.)

Cross references. — Investigations of public utilities, assessing expenses, see § 34-912.

Merit system, implementation task force, effective date provisions, see § 1-636.02.

Merit system, organization for personnel management, Public Service Commission and People's Counsel employees, see § 1-604.06.

Office of the People's Counsel, insurance rates, regulation, see § 31-2703.

Telecommunications competition, "People's Counsel" defined, see § 34-2001.

Utility service, valuation and accounts, reports to Commission, notice to People's Counsel, disclosure, see § 34-1118.

Prior Codifications. — 1981 Ed., § 43-406. 1973 Ed., § 43-205.

Effect of amendments. — D.C. Law 16-33 substituted "The People's Counsel shall be entitled to receive compensation at the midpoint rate for Level III of the Senior Executive Attorney Service, pursuant to §§ 1-608.53 and 1-608.58." for "The People's Counsel shall be entitled to receive compensation at the maximum rate as may be established from time to time for GS-16 of the General Schedule under § 5332 of Title 5 of the United States Code or equivalent compensation pursuant to subchapter XI of Chapter 6 of Title 1.".

D.C. Law 17-108, in subsec. (b), inserted "The People's Counsel shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position."; and added subsec. (c-1).

D.C. Law 17-210, in subsec. (b), substituted "Level II" for "Level III" and substituted "at the maximum rate" for "at the midpoint rate".

D.C. Law 17-353 made a technical change in the enacting clause of D.C. Law 16-33, § 3017, which resulted in no change in text.

D.C. Law 17-250 added subsec. (e).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of (D.C. Law 16-248, March 8, 2007, law notification 54 DCR 3033).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3017 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2 of Office of the People's Council Term Clarification Emergency Amendment Act of 2006 (D.C. Act 16-526, December 4, 2006, 53 DCR 9822).

For temporary (90 day) amendment of section, see § 402 of Clean and Affordable Energy Emergency Act of 2008 (D.C. Act 17-508, September 25, 2008, 55 DCR 10856).

For temporary (90 day) amendment of section, see § 2 of People's Counsel Holdover Extension Emergency Amendment Act of 2009 (D.C. Act 18-241, December 17, 2009, 56 DCR 9376).

For temporary (90 day) amendment of section, see § 2 of People's Counsel Holdover Extension Emergency Amendment Act of 2010 (D.C. Act 18-345, March 23, 2010, 57 DCR 2858).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 34-801.

Legislative history of Law 5-153. — For legislative history of D.C. Law 5-153, see Historical and Statutory Notes following § 34-706.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 34-912.

Legislative history of Law 17-108. — Law 17-108, the "Jobs for D.C. Residents Amendment Act of 2007", was introduced in Council and assigned Bill No. 17-185 which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on July 10, 2007, and October 2, 2007, respectively. Signed by the Mayor on October 26, 2007, it was assigned Act No. 17-172 and transmitted to both Houses of Congress for its review. D.C. Law 17-108 became effective on February 6, 2008.

Legislative history of Law 17-210. — Law 17-210, the "Compensation and Holdover Clarification Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-452 which was referred to Public Services and Consumer Affairs. The Bill was adopted on first and second readings on May 6, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 18, 2008, it was assigned Act No. 17-406 and transmitted to both Houses of Congress for its review. D.C. Law 17-210 became effective on August 15, 2008.

Legislative history of Law 17-250. — Law 17-250, the "Clean and Affordable energy Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-492 which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 1, 2008, and July 15, 2008, respectively. Signed by the Mayor on August 4, 2008, it was assigned Act No. 17-497 and transmitted to both Houses of Congress for its review. D.C. Law 17-250 became effective on October 22, 2008.

References in text. — The "Utility Regulatory Assessment Clarification Act of 1984," referred to in subsection (c) of this section, is D.C. Law 5-153.

Editor's notes. — This section was originally enacted Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8. A new paragraph 91A was added establishing the People's Counsel Dec. 15, 1926, 44 Stat. 921, ch. 8, § 3; the Office of People's Counsel established by 44 Stat. 921 was abolished 1952 Reorg. Plan No. 5, § 2(b), 66 Stat. 824. A new Office of the People's Counsel was established Jan. 2, 1975, 88 Stat. 1975, Pub. L. 93-614, § 1.

CASE NOTES

ANALYSIS

Due process.
In general.

Due process.

District of Columbia's Utility Regulatory Assessment and Clarification Act's grant of explicit independent investigatory authority to Office of People's Counsel has imposed on it by Act a "relevancy" test which clearly circumscribes authority within prudential limits, so that Office does not have power to conduct investigations without limits as to reasonableness, scope, duration, or frequency, in violation of Constitution. D.C. Code 1981, § 43-406(d)(4). Potomac Electric Power Co. v. District of Columbia Government, 651 F. Supp. 907, 1986 U.S. Dist. LEXIS 16007 (1986).

In general.

District of Columbia statute known as "Utility Regulatory Assessment and Clarification Act of 1984" was not charter amendment and did not have to be put in front of voters of District for their approval once popularly elected representatives had approved it; Act did not directly change charter and any indirect effect Act might have had on Public Service Commission did not rise to level of charter amendment by altering structure or manner in which Commission operated in any significant

way. D.C. Code 1981, § 43-406 et seq.; U.S. Const.Amends. 5, 14. Potomac Electric Power Co. v. District of Columbia Government, 651 F. Supp. 907, 1986 U.S. Dist. LEXIS 16007 (1986).

§ 34-805. People's Counsel.

There are authorized to be appropriated, to carry out the purposes of §§ 34-804 and 34-912, such sums as may be necessary for fiscal year 1980 and for each fiscal year thereafter.

(Jan. 2, 1975, 88 Stat. 1977, Pub. L. 93-614, § 3; Oct. 20, 1979, D.C. Law 3-34, § 2, 26 DCR 1119.)

Prior Codifications. — 1981 Ed., § 43-407. 1973 Ed., § 43-205a.

Legislative history of Law 3-34. — Law 3-34 was introduced in Council and assigned Bill No. 3-70, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 17, 1979 and July 31, 1979, respectively. Signed by the Mayor on August 31, 1979, it was assigned Act No. 3-100 and transmitted to both Houses of Congress for its review.

§ 34-806. Employees; expenses; expenditures.

(a) The Commission shall have the power in each and every instance to employ and to prescribe the duties of such officers, clerks, stenographers, typewriters, inspectors, experts, and employees as it may deem necessary to carry out the provisions of this subtitle. The Commission is hereby authorized, within the appropriation made by Congress, to incur and pay incidental expenses for postage, printing, blanks, books, law books, books of reference, and periodicals, stationery, binding, rebinding, repairing and preservation of records, desks, office furniture and supplies, traveling expenses of the Commission, the commissioners, and every officer, agent, and employee thereof, and all other general expenses reasonably necessary to be incurred in carrying out the purposes of this subtitle. All payments and disbursements, as provided in this subtitle, shall be made by the Disbursing Officer of the District of Columbia upon proper vouchers, certified as required by the Commission; and the Commission is hereby also granted power and authority to designate and appoint during its pleasure such officers, clerks, inspectors, and employees of the District of Columbia and members of the Metropolitan Police force of the District of Columbia to perform any of the duties which the Commission may from time to time, respectively, assign to them, and to employ any assistance within the limits of the appropriations for its use made by act of Congress.

(a-1) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Commission unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the Commission. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the Commission for the first

7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment.

(b) The Commission is authorized to enter into contracts with the District government, the United States government, and other public and private entities for goods and services, as needed, to achieve its purposes in carrying out its statutory duties.

(Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 95; Mar. 3, 1979, D.C. Law 2-139, § 3205(o), 25 DCR 5740; Apr. 20, 1999, D.C. Law 12-263, § 13(c)(2), 46 DCR 2111; Feb. 6, 2008, D.C. Law 17-108, § 212(b), 54 DCR 10993.)

Cross references. — Merit system, implementation task force, effective date provisions, see § 1-636.02.

Prior Codifications. — 1981 Ed., § 43-408. 1973 Ed., § 43-206.

Effect of amendments. — D.C. Law 17-108 added subsec. (a-1).

Emergency legislation. — For temporary amendment of section, see § 2 of the District of Columbia Public Service Commission Independent Procurement Authority Emergency Amendment Act of 1998 (D.C. Act 12-438, August 18, 1998, 45 DCR 6291), and § 3(2) of the Public Service Commission Independent Procurement Authority Emergency Amendment Act of 1999 (D.C. Act 13-52, April 6, 1999, 45 DCR 3638).

For temporary (90-day) amendment of section, see § 3(2) of the Public Service Commission Independent Procurement Authority Emergency Amendment Act of 1999 (D.C. Act 13-52, April 6, 1999, 46 DCR 3638).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 34-801.

Legislative history of Law 12-263. — Law 12-263, the "Residential Real Property Seller Disclosure, Funeral Services Date Change, and Public Service Commission Independent Procurement Authority Act of 1998," was introduced in Council and assigned Bill No. 12-648, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 6, 1998, and November 10, 1998, respectively. Vetoed by the Mayor on December 29, 1998, Council overrode the veto on January 5, 1999 and the Bill was assigned Act No. 12-625 and transmitted to both Houses of Congress for its review. D.C. Law 12-263 became effective on April 20,

Editor's notes. — Disbursing Office abolished: The Disbursing Office, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952, established under the direction and control of the Board of Commissioners a Department of General Administration headed by a Director. The Order transferred to the Director of General Administration all of the functions of the abolished Office. Reorganization Order No. 20 established the Finance Office in the Department of General Administration. Included in the Finance Office were an Office of the Assessor, the Office of the Collector of Taxes, the Disbursing Office, and the Accounting Office headed by an Accounting Officer. The function of approving vouchers was delegated to the Accounting Officer by that Order. Reorganization Order No. 20 was replaced by Organization Order No. 121. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order No. 3 and Organization Order No. 121 were revoked by Organization Order No. 3 of the Commissioner of the District of Columbia, dated December 13, 1967. Organization Order No. 3 established within the newly created Department of General Administration, a Finance Office and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Functions pertaining to centralized accounting (including approving vouchers) as set forth in that Order were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. The Office of Budget and Financial Management was replaced by Organization Order No. 50, dated December 31, 1974, which Order established the Office of Budget and Management Systems. The Office of Budget and Management Systems was replaced by Mayor's Order No. 79-5, dated January 2, 1979, which Order established the Office of Budget and Resources Development.

§ 34-807. Authority of Interstate Commerce Commission withdrawn; rules and regulations to remain in force; joint action in regulation of public-service company.

(a) The authority vested by law in the Interstate Commerce Commission by virtue and under the Act of Congress, approved May 23, 1908, entitled "An Act authorizing certain extensions to be made in the lines of the Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Railway of Washington, and the Capital Traction Company, in the District of Columbia and for other purposes" shall no longer be exercised by the Interstate Commerce Commission; provided, that the orders, rules, and regulations made by the Interstate Commerce Commission shall continue to be in force until changed, repealed, altered, or amended by the Commission created by this subtitle, which said Commission is hereby given power and jurisdiction to issue and, at its pleasure, to revoke all permits, or licenses, to carry this subtitle into effect, and its rules and regulations shall be valid and binding on all public-service corporations and on all persons.

(b) The Commission may act jointly or concurrently with any official board or commission of the United States or any state thereof in any proceeding relating to the regulation of any public utility. Any such action may be under an interstate compact or agreement, or under the concurrent power of the States to regulate interstate commerce, or as an agency of the federal government, or otherwise.

(Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96; Aug. 11, 1971, 85 Stat. 320, Pub. L. 92-94, § 1(c); May 9, 2000, D.C. Law 13-107, § 201(e), 47 DCR 1091.)

Prior Codifications. — 1981 Ed., § 43-409. 1973 Ed., § 43-207.

Effect of amendments. — D.C. Law 13-107 substituted in subsec. (b) "public utility" for "public service company".

Legislative history of Law 13-107. — Law 13-107, the "Retail Electric Competition and Consumer Protection Act of 1999," was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

References in text. — The Capital Transit Company succeeded to the powers and obligations of the Capital Traction Company and of the Washington Railway and Electric Company, referred to in subsection (a) of this section, pursuant to the Act of January 14, 1933, 47 Stat. 752.

§ 34-808. Orders for repairs; improvement in equipment, service.

Whenever the Commission shall be of opinion, after hearing had upon its own motion or upon complaint, that repairs, improvements, or changes in any street railroad, gas plant, electric plant, telephone line, telegraph line, pipeline, waterpower plant, or the facilities of any common carrier ought reasonably to be made, or that any addition of service or equipment ought reasonably to be made thereto, or that the vehicles or cars of any street railroad or common

carrier are unclean, insanitary, uncomfortable, inconvenient, or improperly equipped, operated, or maintained, or are in need of paint, or unsightly in appearance, or that any addition ought reasonably to be made thereto, in order to promote the comfort or convenience of the public or employees, or in order to secure adequate service or facilities, the Commission shall have power to make and serve an order directing that such repairs, improvements, changes, or additions to service or equipment be made within a reasonable time and in a manner to be specified therein, and every such public utility is hereby required and directed to obey every such order of the Commission.

(Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96.)

Cross references. — Public utilities construction oversight and accounts, see § 34-1116.

Street railways and bus lines, generally, see § 35-201 et seq.

Prior Codifications. — 1981 Ed., § 43-410. 1973 Ed., § 43-208.

CASE NOTES

ANALYSIS

In general.
Judicial review.

In general.

Where Public Utilities Commission of the District of Columbia conducted investigation of transit radio service on busses and streetcars in accordance with prescribed statutory procedure and found that radio reception was not an obstacle to safety of operation, that public comfort and convenience were not impaired and that in fact the creation of better will among passengers tended to improve conditions under which the public rode, concluding that such installation and use were not inconsistent with public convenience, comfort and safety, Board was within its discretion in dismissing investigation. D.C. Code 1940, §§ 43-408 to 43-410, 43-704 to 43-710. Public Utilities Commission of District of Columbia v. Pollak, 72 S.Ct. 813, 1952 U.S. LEXIS 2061 (U.S.Dist.Col. 1952).

It was within statutory authority of the Public Utilities Commission of the District of Columbia to prohibit or to permit and regulate the receipt and amplification of transit radio programs on streetcars and busses under such conditions that total utility service would not be unsafe, uncomfortable or inconvenient. D.C. Code 1940, §§ 29-201 et seq., 43-408 to 43-410, 43-704 to 43-710. Public Utilities Commission of District of Columbia v. Pollak, 72 S.Ct. 813, 1952 U.S. LEXIS 2061 (U.S.Dist.Col. 1952).

In proceeding by the Public Utilities Commission of the District of Columbia to investigate and determine whether installation and use of transit radio receivers on streetcars and busses were consistent with public convenience, comfort and safety testimony did not compel a finding that programs interfered substantially with conversation of passengers or with rights of communication constitutionally protected in public places. D.C. Code 1940, §§ 43-408 to 43-410. Public Utilities Commission of District of Columbia v. Pollak, 72 S.Ct. 813, 1952 U.S. LEXIS 2061 (U.S.Dist.Col. 1952).

Judicial review.

In proceeding by the Public Utilities Commission of the District of Columbia to determine whether installation and use of radio receivers in streetcars and busses were consistent with public convenience, comfort and safety, courts on review were expressly restricted to facts found by Commission insofar as those findings did not appear to be unreasonable, arbitrary or capricious. D.C. Code 1940, §§ 43-408 to 43-410. Public Utilities Commission of District of Columbia v. Pollak, 72 S.Ct. 813, 1952 U.S. LEXIS 2061 (U.S.Dist.Col. 1952).

In proceeding by the Public Utilities Commission of the District of Columbia to determine whether installation and use of radio receivers in streetcars and busses were consistent with public convenience, comfort and safety, weight to be attached to public opinion surveys was a proper matter for determination by the Commission. D.C. Code 1940, §§ 43-408 to 43-410. Public Utilities Commission of District of Columbia v. Pollak, 72 S.Ct. 813, 1952 U.S. LEXIS 2061 (U.S.Dist.Col. 1952).

§ 34-808.01. Competitive energy supplier consumer awareness program.

(a) The Office of the People's Counsel shall establish a program to increase the awareness of District residents of the availability of services offered by competitive energy providers and the means by which to procure such services.

(b) The Public Service Commission shall establish a program to increase the awareness of District residents of the availability of services offered by competitive energy providers and the means by which to procure such services.

(Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97A, as added Aug. 16, 2008, D.C. Law 17-219, § 2026, 55 DCR 7598; Oct. 22, 2008, D.C. Law 17-250, § 401, 55 DCR 9225.)

Legislative history of Law 17-219. — Law 17-219, the "Fiscal Year 2009 Budget Support Act of 2008", was introduced in Council and assigned Bill No. 17-678, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 26, 2008, it was assigned Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

Short title. — Short title: Section 2025 of D.C. Law 17-219 provided that subtitle K of title II of the act may be cited as the "Competitive Energy Supplier Consumer Awareness Amendment Act of 2008".

§ 34-808.02. Supervision and regulation considerations.

In supervising and regulating utility or energy companies, the Commission shall consider the public safety, the economy of the District, the conservation of natural resources, and the preservation of environmental quality.

(Mar. 4, 1913, ch. 50, § 8, par. 96A, as added Oct. 22, 2008, D.C. Law 17-250, § 401, 55 DCR 9225.)

Emergency legislation. — For temporary (90 day) addition, see § 401 of Clean and Affordable Energy Emergency Act of 2008 (D.C. Act 17-508, September 25, 2008, 55 DCR 10856).

Legislative history of Law 17-250. — For Law 17-250, see notes following § 34-804.

§ 34-809. Authority of Mayor not affected; ordinances of Commissioners not affected unless modified by Commission.

All the duties, powers, and authority of the Mayor of the District of Columbia shall continue and remain in full force and effect notwithstanding this subtitle; and all powers, authority and duties of the municipality known as the District of Columbia and all rights vested in said municipality shall continue and remain in full force and effect notwithstanding this subtitle. All the lawful ordinances and regulations made by the Commissioners of the District of Columbia as such, and all other lawful municipal ordinances and regulations, shall continue and remain in full force and effect, and may be altered, changed, or amended, and new ordinances and regulations may be made by the Mayor of the District of Columbia, acting as such, hereafter, notwithstanding this

subtitle; provided, that when any order of the Commission created by this subtitle shall be made which shall be inconsistent and repugnant to any municipal ordinance or regulation, or any ordinance or regulation made or to be made by the Mayor of the District of Columbia, acting as such, then and in such event the order of the Commission created by this subtitle shall be given full force and effect, notwithstanding such municipal ordinance or regulation.

(Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 99.)

Cross references. — Public Service Commission, creation, powers and duties, see § 34-802.

General provisions, construction and severability of law, see § 34-403.

Penal provisions, unjust discrimination in rates, punishment, see § 34-702.

Public utilities, penal provisions, fines and penalties, see § 34-706.

Separability and saving clause, see §§ 34-405 and 34-406.

Utility failure to disclose, fraud, fines and penalties, see § 34-705.

Utility service, valuation and accounts, service and facilities charges, certification, see § 34-1101.

Prior Codifications. — 1981 Ed., § 43-411. 1973 Ed., § 43-209.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CHAPTER 9. RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS.

Sec.
34-901. Existing rates continued; schedules to be filed; application to change rates; review of ruling by Court of Appeals.
34-902. Commission may adopt rules and regulations.
34-903. Commission to keep informed of business conduct of utilities.
34-904. Inspection of books and examination of officers of utilities.
34-905. Production of records of utilities; attendance of witnesses; duties of United States Attorney and Corporation Counsel.
34-906. Appointment of investigating agents; powers.
34-907. Utilities to furnish information required by Commission; maps, books, reports to be delivered on request.
34-908. Investigation of unjust discriminatory rates, schedules, or services; no order to be entered without formal hearing.
34-909. Public notice of rate applications or changes in conditions of service; opportunity for public response; notice to utility; setting time and place for hearing and investigation.
Sec.
34-910. Notice as to hearings; compulsory attendance of witnesses.
34-911. Reasonable rates to be ordered; notice to affected utility.
34-912. Expenses of investigation to be borne by utility; deposit for costs; limitation of expenditures in hearings; reimbursement fee.
34-913. Separate hearings on complaints; complaints not to be dismissed because of absence of direct damage.
34-914. Summary investigation.
34-915. Hearings after summary investigation.
34-916. Notice; hearing to be conducted as though complaint had been filed.
34-917. Utility may make complaint.
34-918. Commissioners and agents may administer oaths, issue subpoenas; proceeding to punish for contempt.
34-919. Witness fees.
34-920. Testimony may be taken by deposition.
34-921. Record of proceedings to be kept; testimony to be taken stenographically.
34-922. Certified copy of transcript to be received in evidence; copy to be furnished without cost.

§ 34-901. Existing rates continued; schedules to be filed; application to change rates; review of ruling by Court of Appeals.

(a) Unless the Commission shall otherwise order, it shall be unlawful for any public utility within the District of Columbia to demand, collect, or receive a greater compensation for any service than the charge fixed on the lowest schedule of rates for the same service under the law in force on March 4, 1913.

(b) Every public utility in the District of Columbia shall, within 30 days after March 4, 1913, file in the office of the Commission copies of all schedules of rates and charges, including joint rates, in force on March 4, 1913.

(c) Any public utility desiring to advance or discontinue any such rate or rates may make application to the Commission in writing, stating the advance in or discontinuance of the rate or rates desired, giving the reasons for such advance or discontinuance.

(d) Upon receiving such application the Commission shall fix a time and place for hearing, and give such notice to interested parties as shall be proper and reasonable; if, after such hearing and investigation, the Commission shall find that the change or discontinuance applied for is reasonable, fair, and just, it shall grant the application, either in whole or in part.

(e) Any public utility being dissatisfied with any order of the Commission made under the provisions of this section may commence a proceeding against

it in the District of Columbia Court of Appeals in the manner as is in this subtitle provided, which action shall be tried and determined in the same manner as is in this subtitle provided.

(Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 94; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 588, Pub. L. 91-358, title I, § 168(a)(4).)

Cross references. — Commission authority to set reasonable rates, see § 34-911.

Commission rate schedules, amendments, see § 34-602.

Discriminatory rates and services, investigations by Commission, see § 34-908.

Gas companies, rates and charges, nonpayment, see § 34-1608.

Rates and charges, Commission's power to regulate, see § 34-709.

Rates, Commission investigation with or without notice, see § 34-914.

Rates, examinations, investigations and hearings, complaint by utility, see § 34-917.

Street railways and bus lines, transfers, see §§ 35-207 and 35-212.

Utility financial accounts and reports, see § 34-1109.

Utility service, valuation and accounts, Commission oversight of individual rates and dividends, see § 34-1117.

Utility service, valuation and accounts, rate schedules filed with Commission, see § 34-1123.

Utility service, valuation and accounts, reports to Commission, notice to People's Counsel, disclosure, see § 34-1118.

Valuation of public utilities by Commission, see § 34-1105 et seq.

Prior Codifications. — 1981 Ed., § 43-601. 1973 Ed., § 43-401.

CASE NOTES

ANALYSIS

Authority of Public Utilities Commission.
Burden of proof.
Construction with other laws.
Equal protection.
Findings of commission.
Hearing.
In general.
Interjurisdictional rate setting.
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Rate base.
Reasonableness of rates.
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Authority of Public Utilities Commission.

The responsibility for setting utility rates lies with Public Service Commission, not with reviewing court. Chesapeake & Potomac Tel. Co. v. Public Service Com., 498 A.2d 1167, 1985 D.C. App. LEXIS 502 (1985).

It is Public Utilities Commission, not court, which has responsibility for setting utility rates and establishing rate designs. D.C. Code 1981, §§ 43-501, 43-601, 43-611. People's Counsel of District of Columbia v. Public Service Com., 472 A.2d 860, 1984 D.C. App. LEXIS 316 (1984).

Public Service Commission, not the Court of Appeals, has the sole responsibility for balancing consumer and investor interests in designing rate structures and approving specific charges. D.C. Code 1981, §§ 43-501, 43-601, 43-611. Potomac Elec. Power Co. v. Public Service Com'n of Dist. of Columbia, 457 A.2d 776, 1983 D.C. App. LEXIS 325 (1983).

Burden of proof.

In proceeding by power company, which served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, and which was also subject to regulation by other commissions, including Federal Power Commission, before Public Utility Commission of District of Columbia for rate increase, wherein power company's customer, a District of Columbia transit company, intervened as an interested party, burden upon customer to sustain its attack upon order granting rate increase was carried where findings rationally manifesting the method used in determining the rates, essential to adequate review, were lacking. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Gas company had initial responsibility of demonstrating reasonableness of above-the-line charges to its ratepayers. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

Independent of burden of petitioner in proceedings to review utility rate to show convinc-

ingly that Commission prescribed rate is unreasonable, Commission has burden of showing fully and clearly why it has taken particular rate-making action; absent such comprehensive explanation, judicial review of Commission's substantive decisions cannot be completed and rate order finally approved or set aside. Washington Public Interest Organization v. Public Service Com., 393 A.2d 71, 1978 D.C. App. LEXIS 335 (1978), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3483 (1979).

Construction with other laws.

The Emergency Price Control Act of 1942 and the Inflation Control Act of 1942 did not limit powers conferred by law on regulatory commissions over utility rates nor prohibit such commissions from permitting any increase in utility rates which were not shown to be necessary to prevent actual hardship, nor endow a different federal agency with new and superior rights and powers over utility rates. Emergency Price Control Act of 1942, § 1 et seq., § 302(c), 50 U.S.C. Appendix, § 901 et seq., § 942(c); Inflation Control Act of 1942, § 1 et seq., 50 U.S.C.Appendix § 961 et seq. Vinson v. Washington Gas Light Co., 64 S.Ct. 731, 1944 U.S. LEXIS 1312 (U.S.Dist.Col. 1944).

Equal protection.

Constitutional basis for requiring electric utility rates to meet the test of reasonableness derives from the Fifth and Fourteenth Amendments. D.C. Code§§ 43-301, 43-401, 43-411; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Findings of commission.

In aid of process of rate making within jurisdiction of Public Utility Commission of the District of Columbia, Commission may make findings upon evidence concerning conditions and events beyond its regulatory jurisdiction if such conditions and events are thought to affect rates to be determined by Commission. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

A commission, in reaching decision concerning reasonable rate of return for power company under the prudent investment theory of rate regulation, must make findings upon underlying issues of return necessary to service company's outstanding funded debt and its preferred stock, return necessary to attract investors in common stock, and return on funded debts, preferred stock, and common stock of other public utilities having a risk factor similar to that of the company, and upon issue whether local conditions, economic conditions generally, and risk factor have remained static since determination of rate of return in a previous proceeding involving the company. D.C. Code, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Hearing.

The Public Service Commission did not ignore the statutory requirement of a "formal hearing" when it denied the United States the opportunity to cross-examine 33 witnesses who had submitted prefiled testimony in respect to telephone utility's application for a rate increase as long as the United States, as an intervenor, was permitted to have one witness testify as to whether approval of the joint settlement motion was in the public interest and was afforded the opportunity to submit prefiled and supplemental testimony and to conduct discovery. D.C. Code 1981, §§ 1-1509(b), 43-601(d), 43-608. United States v. Public Service Com., 465 A.2d 829, 1983 D.C. App. LEXIS 461 (1983).

Statute requiring Public Utilities Commission to permit increase in rates by a utility only upon application and after notice, hearing, and investigation did not make invalid the tariff provision, which was accepted by commission without notice, hearing, and investigation, and which limited liability of telephone company for omissions in telephone directory listings. D.C. Code 1961, § 43-401. Bird v. Chesapeake & Potomac Tel. Co., 185 A.2d 917, 1962 D.C. App. LEXIS 407 (Cr.App. 1962).

In general.

District of Columbia Public Service Commission acted properly, in making allowance for federal income taxes in electric power rate case, in applying maximum statutory tax rate. D.C. Code §§ 43-401, 43-706. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

In analyzing whether new rate established by District of Columbia Public Service Commission for electric power was or was not arbitrary, each component of determination was to be analyzed, i. e., reviewing court was to ascertain whether each of elements of Commission's order was supported by substantial evidence in the record. D.C. Code §§ 43-401, 43-704 to 43-710, 43-706. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and con-

sumer interest against exorbitant rates are safeguarded. D.C. Code 1940, §§ 43-301, 43-401, 43-705, 43-706. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

The power to fix public utility rates is a legislative power which has been delegated by Congress to Public Utility Commission of District of Columbia, and in its exercise, within constitutional limits, discretion of commission may not be controlled even by courts. D.C. Code 1940, §§ 43-202, 43-401, 43-306, 43-402, 43-408. Washington Gas Light Co. v. Byrnes, 137 F.2d 547, 1943 U.S. App. LEXIS 4109 (1943).

A tariff rate proceeding must both set rates and conduct formal hearing in order to qualify as "rate case" within meaning of statute providing that regulated utility shall bear cost of various expenses of Office of the People's Counsel and Public Service Commission. D.C. Code 1981, §§ 43-601(d), 43-608, 43-612, 43-612(a)(2, 3). Office of People's Counsel v. Public Service Com., 572 A.2d 410, 1990 D.C. App. LEXIS 56 (1990).

Evidence of Public Service Commission's approval of telephone company's repagination of tariff pages did not constitute proof that the Commission had substantively approved tariff. Professional Answering Service, Inc. v. Chesapeake & Potomac Tel. Co., 565 A.2d 55, 1989 D.C. App. LEXIS 200 (1989).

Public Service Commission, not the Court of Appeals, has responsibility for setting utility rates and establishing rate designs; in doing so, however, it must arrive at a fair balance between competing consumer and investor interests. D.C. Code 1981, §§ 43-501, 43-601, 43-611, 47-2501. Washington Metropolitan Area Transit Authority v. Public Service Com., 486 A.2d 682, 1984 D.C. App. LEXIS 583 (1984).

Realistic electricity rate making in today's economic climate must take into account the lengthening delays occasioned by the regulatory processes, while recognizing the need for preserving an appropriate balance between investor and consumer interests; regulatory lag may not be arbitrarily cited in an effort to justify failure to strike the needed balance by utilizing the utility's most recent historical data of record. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Congress has properly vested Public Service Commission of District of Columbia, rather than the courts, with the primary rate-making authority in the electric utility field. D.C. Code §§ 43-301, 43-401, 43-706. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Absent a controlling statutory provision, no reason existed to construe telephone company's "new service" offering, viz., a technologically improved PBX system, as essentially different from a rate change application, wherein Public Service Commission approval is statutorily required. D.C. Code §§ 43-323, 43-401, 43-408, 43-411, 43-701. Chesapeake & Potomac Tel. Co. v. Public Service Com., 378 A.2d 1085, 1977 D.C. App. LEXIS 394 (1977).

Interjurisdictional rate setting.

It was not unreasonable, in allocating systemwide rate increase as between District of Columbia and state of Maryland, for Public Service Commission to let share of revenue increase follow share of total test-year electricity sales applicable to each jurisdiction. D.C. Code § 43-401. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

Where power company's rates in District of Columbia are arrived at by formulating schedules on system-wide basis, extending into other jurisdictions, rates must be supported also by findings of similar conditions pertinent to rate-fixing where the other rates are similar or, where other rates are different, by findings of other relevant economic conditions which justify, on a rational basis, the District rates in relation to the other rates, and, if this cannot be done, it would seem necessary to resort to allocation. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Where areas served by power company are found to be substantially the same with respect to all features bearing upon reasonableness of power company's rate, and areas are shown to be intimately bound together, there is not any occasion to separate costs and revenues of power company according to jurisdictional lines, but evidence and findings must bring the situation within such tests if such tests are to apply. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Where problem of determining rate for power company lies across jurisdictional lines and is not solved by the permissible formulae of allocating, as between jurisdictions, either properties, costs, and revenues, or costs and revenues, method which is adopted must be rationally manifested in findings and conclusions, the findings grounded in evidence and the conclusions grounded in evidence and reasoning, which enable the court to support the rates for one jurisdiction alone. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Where power company served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, and system-wide method was pursued in determining rates for District of Columbia consumers, such rates would have to be reasonable, just, and nondiscriminatory as a part of, or in relation to, system rates contained in schedules for areas and services beyond jurisdiction of Public Utility Commission of District of Columbia so that District consumers would not subsidize non-District consumers or vice versa. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Where power company served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, use by Public Utility Commission of District of Columbia of power company's system-wide revenues and revenue needs as part of process of reaching approved rates for District of Columbia was proper. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Where electric power company supplied from the same powerhouse electric current to customers in the District of Columbia and to customers in Maryland and Virginia, the Public Utilities Commission of the District of Columbia, in determining whether rates for electric power should be increased, properly treated the business of the company as a single enterprise and refused to segregate properties or allocate costs attributable to the part of the business done in the District of Columbia. D.C. Code 1940, §§ 43-705, 43-706. Leeman v. Public Utilities Commission of District of Columbia, 104 F.Supp. 553, 1952 U.S. Dist. LEXIS 4351 (D.D.C1952).

Judicial review.

The statutory authority of the Court of Appeals to review questions of law implies necessity for making findings, in proceeding to determine rates for power company, rationally manifesting method used in determining such rates. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Ultimate responsibility for determining correct meaning of statute is the duty of District of Columbia Court of Appeals but it accords substantial deference to any reasonable interpretation of Public Utilities Act by Public Service Commission which is charged with Act's administration and enforcement. D.C. Code 1981, § 43-101 et seq. Professional Answering Service, Inc. v. Chesapeake & Potomac Tel. Co., 565 A.2d 55, 1989 D.C. App. LEXIS 200 (1989).

So long as rate order of Public Service Commission is within a zone of reasonableness, it is insulated from judicial review, provided that Commission has carried its burden of showing fully and clearly why it has taken the particular rate-making action. Chesapeake & Potomac Tel. Co. v. Public Service Com., 498 A.2d 1167, 1985 D.C. App. LEXIS 502 (1985).

Although reviewing court will not set aside a rate order unless party challenging it makes a "convincing showing" that it is unreasonable, unjust, or discriminatory, at same time court cannot approve rate order unless Public Service Commission has fully and clearly explained why it has entered the particular order under review. Chesapeake & Potomac Tel. Co. v. Public Service Com., 498 A.2d 1167, 1985 D.C. App. LEXIS 502 (1985).

Sole rate-making authority in electric utility rate cases is vested in Public Service Commission; Court of Appeals is not to substitute its judgment for that of the Commission; even though the Court might arrive at somewhat different decision than did the Commission, if there is substantial evidence to support Commission's findings and conclusions, the Court must affirm. D.C. Code § 43-706. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

As long as there is substantial evidence to support reasoned conclusion of Public Service Commission in electric utility rate case the Court of Appeals must affirm. D.C. Code § 43-706. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

Rate base.

So long as capitalized interest is not included in rate base, inclusion of plant under construction provides no excessive compensation to utility. D.C. Code § 43-401. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

District of Columbia Public Service Commission did not act arbitrarily, in rate-making case, by inclusion of plant under construction in rate base, although there were alternative methods available. D.C. Code §§ 43-401, 43-704 to 43-710. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

District of Columbia Public Service Commission did not act arbitrarily, or "double charge" electric power rate payers, by adopting end-of-period rate base and by increasing overall fair

rate of return allowed, thus assertedly taking account of effects of inflation twice. D.C. Code §§ 43-401, 43-706. Goodman v. Public Service Com., 497 F.2d 661, 1974 U.S. App. LEXIS 9518 (C.A.D.C. 1974).

Where power company served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, ascertainment of rate base on basis of system-wide operations of the well integrated power company without allocation of its properties, costs, or revenues to the different jurisdictions, served was not illegal in itself nor upon facts peculiar to power company's case. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-705, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Where attrition is found to exist, Public Service Commission may use electric utility's year-end rather than year's average rate base in determining appropriate rate. D.C. Code § 43-706. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

In proceedings on application by electric utility for rate increase, Public Service Commission did not fail to account for attrition incurred by the utility in establishing rate base so as to render decision of the Commission arbitrary, capricious and unreasonable. D.C. Code § 43-706. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

For electric utility rate-making purposes, the rate base multiplied by the rate of return, with necessary adjustments for income tax liability, determines the revenue requirements; "rate base" being defined as the value of the utility's property used and useful in the public service minus accrued depreciation. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Where prior to oral argument actual figures for utility's operations for 12-month period ending June 30, 1975, were presented to Public Service Commission, which figures indicated that severe attrition had been experienced since end of 1974 and demonstrated that calendar year 1974 test period had become irrelevant to utility's actual financial status, Commission's decision to use a partially end-of-period calendar 1974 rate base was arbitrary; by focusing narrowly on two isolated "causes" of financial decline and distinguishing them from attrition-related factors, for which adjustments were made, the Commission failed to properly evaluate and deal with utility's overall economic problem. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

By disregarding evidence as to operating results for first six months of 1975 and rationalizing that 1974 decline in rate of return and earnings was attributed to factors allegedly unrelated to attrition, i.e., energy crisis and decline in sales to electricity interchange pool, the Public Service Commission arbitrarily utilized the test period, i.e., calendar year 1974, and a consequent rate base devoid of predictive value. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Reasonableness of rates.

From the investor standpoint, courts have defined the lower boundary of the zone of reasonableness for a rate set by the Public Service Commission as one which is not confiscatory in the constitutional sense, and from the consumer standpoint, the upper boundary cannot be so high that the rate would be classified as exorbitant. D.C. Code 1973, §§ 43-301, 43-401, 43-411. Metropolitan Washington Bd. of Trade v. Public Service Com., 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

If an electric rate has been properly promulgated by Public Service Commission and is reasonable, just and nondiscriminatory, electric utility must charge that rate and, correspondingly, consumer must pay that amount unless there is a valid defense to such a charge. D.C. Code §§ 43-201a, 43-301, 43-401. District of Columbia v. Potomac Electric Power Co., 402 A.2d 430, 1979 D.C. App. LEXIS 377 (1979).

Utility rate cannot be deemed "reasonable" simply because expert agency says it is. Washington Public Interest Organization v. Public Service Com., 393 A.2d 71, 1978 D.C. App. LEXIS 335 (1978), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3483 (1979).

While regulation does not guarantee that an electric utility will achieve its projected revenues, it must provide the utility with a reasonable opportunity to earn a rate of return sufficient to maintain its financial integrity, to attract necessary capital at reasonable cost and to compensate investors fairly for the risks they have assumed, while protecting relevant public interests; rate making involves a delicate balancing of investor and consumer interests. D.C. Code §§ 43-301, 43-401, 43-411; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Electricity rate order was unjust and unreasonable where it deprived utility of opportunity to earn a fair rate of return by improperly

disregarding the latest relevant historical data of record pertaining to its operations, in that Public Service Commission refused to utilize most recent test period in the record, failed to account for continuing attrition and refused to recognize certain known changes which occurred after the original proposed test period. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

To be "just and reasonable," electricity rates must be set at a level that permits the utility to earn a fair rate of return on its investment. D.C. Code §§ 43-301, 43-401, 43-411; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

No single formula or combination of formulas limits a regulatory commission's power to set "just and reasonable" electricity rates; however, a commission is obliged to make pragmatic adjustments where appropriate circumstances exist and courts may intervene only on a "clear showing" of a due process violation and if the rate order, viewed in its entirety, produces no arbitrary result, judicial inquiry is to be terminated. D.C. Code §§ 43-301, 43-401, 43-411, 43-705; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

In determining whether an electricity rate is "just and reasonable," it is the result reached and not the method employed that is controlling. D.C. Code §§ 43-301, 43-401, 43-411, 43-705; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Recouping past losses.

Although surcharge could be imposed to recover revenues lost by electric utility while inadequate rate order was in effect, Public Service Commission was to determine whether surcharge was to be offset by any unusually high revenues experienced because of moderately warmer summer and uniquely colder winter while the challenge rate was in effect. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

General principle precluding a utility from charging higher rates in the future in order to recoup past losses did not preclude imposition of a surcharge to recover revenues lost by electric utility while rate order, which was found to be arbitrary and unreasonable, was in effect; losses occurred after fair rate of return had been determined and lost revenues were shown, by abundant evidence, to have been result of arbitrary and unreasonable rulings of Public Service Commission; imposition of surcharge to recoup past losses would not constitute retroactive rate making. D.C. Code §§ 1-1510(1), 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

A utility may not charge a higher rate in the future in order to recoup past losses. D.C. Code §§ 43-301, 43-401. Chesapeake & Potomac Tel. Co. v. Public Service Com., 330 A.2d 236, 1974 D.C. App. LEXIS 316 (1974).

Remand.

In proceeding by power company, which served District of Columbia and other jurisdictions, before Public Utility Commission of District of Columbia for rate increase, case would be remanded to commission to make further findings concerning return necessary to service outstanding funded debt and preferred stock and to attract investors in common stock and concerning return on such debt and stock of other similar public utilities and changes in local and economic conditions and risk factor since last determination of rate of return. D.C. Code, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Court of Appeals, having held erroneous orders entered by commission, in proceeding by power company for rate increase wherein power company's customer intervened as an interested party, would direct District Court to enter judgment (1) requiring parties to segregate on their accounts, amounts involved in rate increase authorized by erroneous orders, and (2) remanding case to commission for further administrative proceedings. D.C. Code, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Telecommunications rates.

Telephone tariff rate proceeding which was conducted without formal hearing was not "rate case," but "other investigation," within meaning of statute requiring regulated utilities to bear reasonable and necessary costs incurred by Public Service Commission and the Office of the People's Counsel. D.C. Code 1981,§§ 43-601(d), 43-608, 43-612, 43-612(a)(2, 3). Office of People's Counsel v. Public Service Com., 572 A.2d 410, 1990 D.C. App. LEXIS 56 (1990).

The Public Service Commission acted within scope of powers implied in its authorizing legislation in approving expedited compliance review mechanism for reviewing telephone company's individual case basis tariff filings for internal telecommunications service customers; individual case basis tariff procedure developed by the PSC unfettered telephone company from restraints that harmed its competitive position in relation to unregulated competitors. D.C. Code 1981, §§ 43-103, 43-

601(d), 43-902. Office of People's Counsel v. Public Service Com., 571 A.2d 206, 1990 D.C. App. LEXIS 48 (1990).

Public Service Commission's approval of 62% increase by telephone company in recurring rate for certain type of obsolete telephone switchboards was "fair, just and reasonable" within meaning of relevant statutes, despite intervening association's contention that new rate would produce for telephone company a contribution over cost between 183.7% and 230.9%, since telephone company pointed out that such calculations failed to include all of items that were provided in connection with switchboard, and since Commission explicitly stated that increase was in conformity with that imposed on other users. D.C. Code 1982, §§ 43-501, 43-601(d). D.C. Tel. Answering Service Committee v. Public Service Com., 476 A.2d 1113, 1984 D.C. App. LEXIS 388 (1984).

Test periods.

Filing latest available operating data does not necessarily mandate change in test year by Public Service Commission in electric utility rate case; rather it should select test year that appears likely to be representative of future. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

Although electric utility is expected to base its application for rate increase on specified test year, where dispute arises later as to appropriate period to be employed as the test year, it is up to Public Service Commission in reasonable exercise of its discretion to determine to what extent new data can and should be used in the case. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

In proceeding on application by electric utility for rate increase, it was not abuse of discretion to refuse to use amended test year period ending June 30, 1975, instead of original test year ending December 31, 1974, where witnesses for utility stated it was not insisting that new test year be established on basis of new data introduced at end of the proceedings, counsel for the utility asserted no new position and made no motions for adoption of new test year, and the utility, in subsequent oral argument to Public Service Commission, did not raise any question about a June 30, 1975 test year. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

Validity of test period approach in fixing electricity rates rests on assumption that the relationship among revenues, expenses, and rate base established in the test year will continue into the period when the prescribed rates will be in effect; accordingly, a valid test period is one based on the utility's most recent actual experience, with adjustments for all known changes affecting costs and revenues for the immediate future; rate maker may not rely on out-of-date information when more recent actual experience is available. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Fact that electric utility did not suggest substitution of calendar year ending June 30, 1975, for calendar year ending December 30, 1974, as test period in fixing electric utility rates did not justify Public Service Commission's failure to consider data for 12-month period ending June 30, 1975, which data revealed a rapidly worsening financial situation, with utility having unsuccessfully sought two interim rate increases, subject to refund. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Fact that actual operating figures for six-month period ending June 30, 1975, were filed with electric utility's rebuttal testimony did not justify rate maker's refusal to modify calendar year 1974 test period where the new data, which revealed a rapidly worsening financial situation, was filed in ample time to allow for staff and intervenor analysis and cross-examination, no objection was made to such figures and they raised no additional issues and could have been easily audited. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Inclusion of forecasts of an electric utility's financial situation does not necessarily excuse Public Service Commission for its failure to adopt a new test period in setting rates. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

It was arbitrary to refuse to adopt year-end figures for construction work in progress and materials and supplies in passing on electric utility's request for rate increase where only justification for decision to use average data for calendar year test period was that the accounts fluctuated widely and that year-end amounts appeared abnormally high; wide fluctuations in construction work in progress were relevant since any investment leaving such account entered the plant in service account and was simply switched from one rate base account to another. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service

Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Where during calendar 1974 test year the interchange margin applicable to electric utility's business was $17.3 million but by June 30, 1975, such margin had declined by $7.6 million annually and utility demonstrated that the 1974 margin was unusually high, Public Service Commission acted arbitrarily in failing to substitute the latter interchange margin for the former; Commission erred in not making appropriate adjustments for actual transfer of $160 million from construction work in progress funds to plant in service rate base component and for $5 to 7 million increase in investment in materials and supplies. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

§ 34-902. Commission may adopt rules and regulations.

The Commission shall have power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it.

(Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 32.)

Cross references. — Public Service Commission, creation, powers and duties, see § 34-802.

Prior Codifications. — 1981 Ed., § 43-602. 1973 Ed., § 43-402.

CASE NOTES

In general.

The intervention of the Director of Economic Stabilization and Administrator of Office of Price Administration in rate proceeding before the Public Utilities Commission of the District of Columbia was in subordination to Commission's standing rule that intervention should not change or enlarge the issues. Emergency Price Control Act of 1942, § 1 et seq., § 302(c), 50 U.S.C. Appendix, § 901 et seq., § 942(c); Inflation Control Act of 1942, § 1 et seq., 50 U.S.C. Appendix, § 961 et seq.; D.C. Code 1940, §§ 43-101 to 43-1006. Vinson v. Washington Gas Light Co., 64 S.Ct. 731, 1944 U.S. LEXIS 1312 (U.S.Dist.Col. 1944).

The right conferred on Price Administrator to intervene in public utility rate proceeding does not include the power to compel the regulatory party to undertake a complete investigation against its better judgment or upon lines contrary to governing statute. Emergency Price Control Act of 1942, 50 U.S.C.Appendix § 901 et seq.; Inflation Control Act § 1, 50 U.S.C.Appendix, § 961; D.C. Code 1940, §§ 43-202, 43-306, 43-401, 43-402, 43-408. Washington Gas Light Co. v. Byrnes, 137 F.2d 547, 1943 U.S. App. LEXIS 4109 (1943).

Decision of Public Service Commission in telephone rate proceeding to furnish transcripts to intervenors at telephone company's expense did not constitute a proper exercise of Commission's delegated powers to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it, since any procedure established by the Commission must conform with the minimum requirements set forth in Administrative Procedure Act, and since Commissions rule that transcripts be furnished to intervenors at telephone company's expense was a mere nullity because it contravened express language of Administrative Procedure Act. D.C. Code §§ 1-1501, 1-1509(c), 43-402, 43-1003. Chesapeake & Potomac Tel. Co. v. Public Service Com., 339 A.2d 710, 1975 D.C. App. LEXIS 397 (1975).

§ 34-903. Commission to keep informed of business conduct of utilities.

The Commission shall keep itself informed as to the manner and method in which the business of all public utilities is conducted, and shall have the right to obtain from any public utility all necessary information to enable the Commission to perform its duties.

(Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 33.)

Cross references. — Utility records, requirements, see § 34-1109 et seq.

Prior Codifications. — 1981 Ed., § 43-603. 1973 Ed., § 43-403.

§ 34-904. Inspection of books and examination of officers of utilities.

The Commission or any commissioner or any person or persons employed by the Commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records, and memoranda of any public utility, and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs. Any person other than one of said commissioners who shall make such demand shall produce his authority to make such inspection or examination.

(Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 34.)

Cross references. — Utility accounting system, audits and examinations by Commission, see § 34-1114.

Prior Codifications. — 1981 Ed., § 43-604. 1973 Ed., § 43-404.

§ 34-905. Production of records of utilities; attendance of witnesses; duties of United States Attorney and Corporation Counsel.

(a) The Commission may require, by order or subpoena, to be served upon any public utility in the same manner that a summons is served in a civil action in the Superior Court of the District of Columbia, the production within the District of Columbia at such time and place as it may designate of any books, accounts, papers, or records kept by such public utility in any office or place without the District of Columbia, or verified copies in lieu thereof, if the Commission shall so order, in order that an examination thereof may be made by the Commission under its direction. Any public utility failing or refusing to comply with any order or subpoena shall for each day it shall so fail or refuse forfeit and pay to the District of Columbia the sum of $100, to be recovered in an action to be brought in the name of said District.

(b) Attendance of witnesses and the production of such documentary evidence may be required from any place in the United States. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission may invoke the aid of any court of the United States or the Superior Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section. And the said Commission is hereby given power to call on any United States Attorney, the Corporation Counsel of the District of Columbia or any counsel of the Commission to enforce the provisions of this subtitle in the proper courts of the United States, and on such call it shall be the duty of the said United States Attorney, Corporation Counsel, or any counsel of the Commission, upon request of said Commission, to enforce

the provisions of this section, the cost and expenses incurred to be paid out of the appropriations for the expenses of the courts of the United States.

(Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 35; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(39)(B).)

Cross references. — Utility failure to disclose, fraud, fines and penalties, see § 34-705.
Utility records, requirements, see § 34-1109 et seq.

Prior Codifications. — 1981 Ed., § 43-605. 1973 Ed., § 43-405.

§ 34-906. Appointment of investigating agents; powers.

For the purpose of making any investigation with regard to any public utility the Commission shall have power to appoint, by an order in writing, an agent, whose duties shall be prescribed in such order. In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted in this subtitle to the Commission and shall have power to administer oaths and take depositions. The Commission may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agent or agents the taking of all testimony bearing upon any investigation or hearing. The decision of the Commission shall be based upon its examination of all testimony and records. The recommendations made by such agents shall be advisory only, and shall not preclude the taking of further testimony, if the Commission so order, nor further investigation.

(Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 36.)

Section references. — This section is referred to in § 34-918.

Prior Codifications. — 1981 Ed., § 43-606. 1973 Ed., § 43-406.

§ 34-907. Utilities to furnish information required by Commission; maps, books, reports to be delivered on request.

Every public utility shall furnish to the Commission all information required by it to carry into effect the provisions of this subtitle, and shall make specific answers to all specific questions submitted by the Commission. Any public utility receiving from the Commission any blanks with directions to fill the same shall cause the same to be properly filled out so as to answer, fully and correctly, each question therein propounded, and in case it is unable to answer any question it shall give a good and sufficient reason for such failure; and said answer shall be verified under oath by the president, secretary, superintendent, or general manager of such public utility, and returned to the Commission at its office within the period fixed by the Commission. Whenever required by the Commission, every public utility shall deliver to the Commission any or all maps, profiles, contracts, reports of engineers, and all documents, books, accounts, papers, and records, or copies of any or all of the same, with a

complete inventory of all its property, in such form as the Commission may direct.

(Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 37.)

Prior Codifications. — 1981 Ed., § 43-607. 1973 Ed., § 43-407.

§ 34-908. Investigation of unjust discriminatory rates, schedules, or services; no order to be entered without formal hearing.

Upon its own initiative or upon reasonable complaint made against any public utility that any of the rates, tolls, charges, or schedules, or services, or time and conditions of payment, or any joint rate or rates, schedules, or services, are in any respect unreasonable or unjustly discriminatory, or that any time schedule, regulation, or act whatsoever affecting or relating to the conduct of any street railway or common carrier, or the production, transmission, delivery, or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telegraph or telephone message, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the Commission may, in its discretion, proceed, with or without notice, to make such investigation as it may deem necessary or convenient of any public utility. But no order affecting said rates, tolls, charges, schedules, regulations, or act complained of shall be entered by the Commission without a formal hearing.

(Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 38; May 9, 2000, D.C. Law 13-107, § 201(f), 47 DCR 1091.)

Prior Codifications. — 1981 Ed., § 43-608. 1973 Ed., § 43-408.

Effect of amendments. — D.C. Law 13-107 inserted "of any public utility" following "convenient".

Legislative history of Law 13-107. — Law 13-107, the "Retail Electric Competition and Consumer Protection Act of 1999," was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

CASE NOTES

ANALYSIS

Formal hearing.
In general.
Judicial review.
Transit radio services.

Formal hearing.

Public gas utility was not entitled to formal evidentiary hearing in front of Public Service Commission, which instead held legislative-type community hearings before directing utility to keep open certain customer service center so as to make it easier for customers to pay their gas bills, where utility did not make timely request for formal hearing, utility did not present evidence or question witnesses during either public hearing, and utility did not indicate any factual basis to contest testimony presented at public hearings. Wash. Gas Light Co. v. D.C. PSC, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

A formal administrative hearing before the Public Service Commission (PSC) is unnecessary when there is not a dispute over material

facts, and the only disputes concern inferences to be drawn or issues of policy or law. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

Fundamental principle, that administrative agency statutorily or constitutionally required to hold oral evidentiary hearing need not hold such hearing if only legal or policy issues are in dispute, applies to hearings before Public Service Commission (PSC). D.C. Code 1981, § 43-608. Watergate E. v. District of Columbia Pub. Serv. Comm'n, 662 A.2d 881, 1995 D.C. App. LEXIS 137 (1995).

Public Service Commission (PSC) was not required to provide formal hearing on steam and chilled water customers' complaint seeking rate refund for alleged past overcharges by steam, chilled water, and natural gas utility; only disputes involved issues of law, not fact, respecting whether utility's subsequent gas interruptible rate schedule replaced prior similar rate schedule for purposes of fuel adjustment governing steam and chilled water service rate. D.C. Code 1981, § 43-608. Watergate E. v. District of Columbia Pub. Serv. Comm'n, 662 A.2d 881, 1995 D.C. App. LEXIS 137 (1995).

The Public Service Commission did not ignore the statutory requirement of a "formal hearing" when it denied the United States the opportunity to cross-examine 33 witnesses who had submitted prefiled testimony in respect to telephone utility's application for a rate increase as long as the United States, as an intervenor, was permitted to have one witness testify as to whether approval of the joint settlement motion was in the public interest and was afforded the opportunity to submit prefiled and supplemental testimony and to conduct discovery. D.C. Code 1981, §§ 1-1509(b), 43-601(d), 43-608. United States v. Public Service Com., 465 A.2d 829, 1983 D.C. App. LEXIS 461 (1983).

In respect to a telephone company's filings for "new services," a formal hearing is required, under statute, only when the Public Service Commission proceeds upon its own initiative, or a reasonable complaint is made against the utility, on the basis that a rate, schedule or service appears unreasonable or unjustly discriminatory; however, when there is a typical "new service" filing by a telephone company to which no "reasonable objection" is made, and it is acceptable to the Commission, there is no statutory requirement for a formal hearing before approval. D.C. Code § 43-408. Chesapeake & Potomac Tel. Co. v. Public Service Com., 378 A.2d 1085, 1977 D.C. App. LEXIS 394 (1977).

In general.

The filing of a complaint with the Public Utilities Commission of the District of Columbia, asking it to review a decision reached after a public hearing fixing gas rates, is not a condition precedent to the filing of a bill, under Act March 4, 1913, § 8, par. 64, D.C. Code 1929, T. 26, § 89, to have the decision declared void. Hollis v. Kutz, 41 S.Ct. 371, 1921 U.S. LEXIS 1741 (U.S.Dist.Col. 1921).

The right conferred on Price Administrator to intervene in public utility rate proceeding does not include the power to compel the regulatory party to undertake a complete investigation against its better judgment or upon lines contrary to governing statute. Emergency Price Control Act of 1942, 50 U.S.C.Appendix § 901 et seq.; Inflation Control Act § 1, 50 U.S.C.Appendix, § 961; D.C. Code 1940, §§ 43-202, 43-306, 43-401, 43-402, 43-408. Washington Gas Light Co. v. Byrnes, 137 F.2d 547, 1943 U.S. App. LEXIS 4109 (1943).

Public Service Commission had authority to direct public gas utility to keep particular customer service center open so as to make it easier for customers to pay gas bills; statutes granted commission authority to investigate public utility services, including "time and conditions of payment," which were "in any respect unreasonable or unjustly discriminatory," and stated that the Commission may investigate if it believes "any reasonable service is not supplied by a public utility." Wash. Gas Light Co. v. D.C. PSC, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

Judicial review.

In proceeding by the Public Utilities Commission of the District of Columbia to determine whether installation and use of radio receivers in streetcars and busses were consistent with public convenience, comfort and safety, courts on review were expressly restricted to facts found by Commission insofar as those findings did not appear to be unreasonable, arbitrary or capricious. D.C. Code 1940, §§ 43-408 to 43-410. Public Utilities Commission of District of Columbia v. Pollak, 72 S.Ct. 813, 1952 U.S. LEXIS 2061 (U.S.Dist.Col. 1952).

The power to fix public utility rates is a legislative power which has been delegated by Congress to Public Utility Commission of District of Columbia, and in its exercise, within constitutional limits, discretion of commission may not be controlled even by courts. D.C. Code 1940, §§ 43-202, 43-401, 43-306, 43-402, 43-408. Washington Gas Light Co. v. Byrnes, 137 F.2d 547, 1943 U.S. App. LEXIS 4109 (1943).

Transit radio services.

Where Public Utilities Commission of the District of Columbia conducted investigation of transit radio service on busses and streetcars in accordance with prescribed statutory procedure and found that radio reception was not an

obstacle to safety of operation, that public comfort and convenience were not impaired and that in fact the creation of better will among passengers tended to improve conditions under which the public rode, concluding that such installation and use were not inconsistent with public convenience, comfort and safety, Board was within its discretion in dismissing investigation. D.C. Code 1940, §§ 43-408 to 43-410, 43-704 to 43-710. Public Utilities Commission of District of Columbia v. Pollak, 72 S.Ct. 813, 1952 U.S. LEXIS 2061 (U.S.Dist.Col. 1952).

It was within statutory authority of the Public Utilities Commission of the District of Columbia to prohibit or to permit and regulate the receipt and amplification of transit radio programs on streetcars and busses under such conditions that total utility service would not be unsafe, uncomfortable or inconvenient. D.C. Code 1940, §§ 29-201 et seq., 43-408 to 43-410, 43-704 to 43-710. Public Utilities Commission of District of Columbia v. Pollak, 72 S.Ct. 813, 1952 U.S. LEXIS 2061 (U.S.Dist.Col. 1952).

§ 34-909. Public notice of rate applications or changes in conditions of service; opportunity for public response; notice to utility; setting time and place for hearing and investigation.

(a) Notice of every rate application or change in condition of service proposed and filed with the Public Service Commission shall be given by the utility to each residential or commercial rate payer affected by the proposed rate application or change. The notice shall be available for viewing at a utility's website, and either by electronic notice to those ratepayers who have registered for electronic billing with the utility or by written notice in the affected ratepayer's billing envelope. The notice shall be sent in not later than the next billing period following the filing; no filing may be approved by the Commission without adequate time for rate payer response. Each notice shall be sufficiently accurate and detailed for the rate payer to understand the filing, including the rate payer's specified affected interest. The notice shall provide the specific rate or service change affecting the rate payer, including the proposed percentage and dollar increase for the rate and rider category of the customer. For every proceeding in which the Commission has a public hearing, the public shall be given a timely opportunity to present its views, as evidence of record, with at least 45 days notice, with notice widely and publicly distributed in a form sufficiently detailed and complete to permit the public to realize its specific and affected interest.

(b) The Commission shall, prior to the formal hearing, notify the public utility complained of that a complaint has been made, and 10 days after the notice has been given the Commission may proceed to set a time and place for a hearing and an investigation as hereinafter provided.

(Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 39; Mar. 14, 1985, D.C. Law 5-153, § 3(d), 31 DCR 6440; July 17, 1985, D.C. Law 6-9, § 2(a), 32 DCR 2961; Mar. 10, 2004, D.C. Law 15-89, § 2, 51 DCR 1; Apr. 12, 2005, D.C. Law 15-342, 303(d), 52 DCR 2346.)

Prior Codifications. — 1981 Ed., § 43-609. 1973 Ed., § 43-409.

Effect of amendments. — D.C. Law 15-89, in subsec. (a), substituted "Notice of every rate application or change in condition of service proposed and filed with the Public Service Commission shall be given by the utility to each residential or commercial rate payer affected by the proposed rate application or change. The notice shall be: (1) by written notice in the affected rate payer's billing envelope, (2) by electronic notice to those rate payers who have

registered for electronic billing with a utility, and (3) available for viewing at a utility's website and updated by a utility on at least a monthly basis consistent with the billing cycle." for "Notice shall be given to the public by the utility in each rate payer's billing envelope of every rate application or change in condition of service proposed and filed with the Public Service Commission."

D.C. Law 15-342, in subsec. (a), substituted "The notice shall be available for viewing at a utility's website, and either by electronic notice to those ratepayers who have registered for electronic billing with the utility or by written notice in the affected ratepayer's billing envelope." for "The notice shall be: (1) by written notice in the affected rate payer's billing envelope, (2) by electronic notice to those rate payers who have registered for electronic billing with a utility, and (3) available for viewing at a utility's website and updated by a utility on at least a monthly basis consistent with the billing cycle."

Emergency legislation. — For temporary (90 day) amendment of section, see § 303(d) of Omnibus Utility Emergency Amendment Act of 2005 (D.C. Act 16-12, January 28, 2005, 52 DCR 2945).

Legislative history of Law 5-153. — Law 5-153 was introduced in Council and assigned Bill No. 5-225, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on October 23, 1984, and November 7, 1984, respectively. Disapproved by the Mayor on November 30, 1984, the Bill was reenacted by the Council on December 4, 1984, assigned Act No. 5-217 and transmitted to both Houses of Congress for review.

Legislative history of Law 6-9. — Law 6-9 was introduced in Council and assigned Bill No. 6-178, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on April 16, 1985, and April 30, 1985, respectively. Signed by the Mayor on May 16, 1985, it was assigned Act No. 6-22 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-89. — Law 15-89, the "Utility Rate Payers Amendment Act of 2003", was introduced in Council and assigned Bill No. 15-438, which was referred to Committee on Public Interest. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on December 18, 2003, it was assigned Act No. 15-259 and transmitted to both Houses of Congress for its review. D.C. Law 15-89 became effective on March 10, 2004.

Legislative history of Law 15-342. — For Law 15-342, see notes following § 34-401.

§ 34-910. Notice as to hearings; compulsory attendance of witnesses.

The Commission shall give the public utility and the complainant, if any, 10 days notice of the time and place when and where such hearing and investigation will be held and such matters considered and determined. Both the public utility and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses.

(Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 40.)

Cross references. — Commission rate schedules, amendments, see § 34-602.

Section references. — This section is referred to in §§ 34-911 and 34-916.

Prior Codifications. — 1981 Ed., § 43-610. 1973 Ed., § 43-410.

CASE NOTES

Due process.

Failure of notice of hearing, at which intervenor was given opportunity to cross-examine representative of gas and electric utility on its practice of requiring initial deposits from residential customers, and after which public service commission entered order in effect prohibiting utility from requiring such deposits until after credit check had been made, to specifically state that initial deposits were being considered did not deny due process, in light of indication that utility was aware that its deposit requirement was to be subject matter of hearing. D.C. Code §§ 43-410, 43-705. Washington Gas Light Co. v. Public Service Com, 334 F. Supp. 1062, 1971 U.S. Dist. LEXIS 10479 (1971).

§ 34-911. Reasonable rates to be ordered; notice to affected utility.

If upon such investigation the rates, tolls, charges, schedules, or joint rates shall be found to be unjust, unreasonable, insufficient, or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of this subtitle, the Commission shall have power to determine and by order fix and order to be substituted therefor such rate or rates, tolls, charges, or schedules as shall be just and reasonable. If upon such investigation it shall be found that any regulation, time schedule, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of any of the provisions of this section, or if it be found that reasonable service is not supplied, the Commission shall have power to determine and substitute therefor such other regulations, time schedules, service, or acts and to make such orders respecting and such changes in such regulations, time schedules, service, or acts as shall be just and reasonable. And upon any investigation for the purpose of determining upon and requiring any reasonable extension or extensions of lines or of service that shall promise to be compensatory within a reasonable time, the Commission shall have power to fix, determine, and require every such extension or extensions to be made and the terms and conditions upon which the same shall be made; provided, that no hearing shall be had and no order shall be made respecting such extension or extensions, without notice to the public utility affected thereby, as provided in § 34-910.

(Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 41.)

Prior Codifications. — 1981 Ed., § 43-611. 1973 Ed., § 43-411.

CASE NOTES

Analysis

Equal protection.
Gas charges.
In general.
Interjurisdictional rates.
Presumptions and burden of proof.
Rate base.
Reasonableness of rates.
Remand.
Review.
Telecommunications rates.

Equal protection.

Constitutional basis for requiring electric utility rates to meet the test of reasonableness derives from the Fifth and Fourteenth Amendments. D.C. Code§§ 43-301, 43-401, 43-411; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Gas charges.

Whether or not the Public Utilities Commission of the District of Columbia under Act March 4, 1913, § 8, 37 Stat. 974 et seq., has power to raise the price of gas to the government above the statutory rate, other consumers have no right to complain that they were not treated by the commission on an equality with the government. Hollis v. Kutz, 41 S.Ct. 371, 1921 U.S. LEXIS 1741 (U.S.Dist.Col. 1921).

The prudent investment theory of gas rate regulation requires determination by District of Columbia Public Utilities Commission of the rate base and of a rate of return on that rate base sufficient to produce adequate revenues above operating expenses, including depreciation, to pay interest on bonds, dividends on stock and maintain financial integrity of the enterprise, and it is essential to inquiry on fair rate of return that there be a study of capital costs of the business, such as service on debt and dividends on stock, in light of returns on other investments in other enterprises having similar risk factor. D.C. Code 1940, § 43-301. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

The District of Columbia Public Utilities Commission's statement that return of less than four per cent was inadequate to maintain gas company in sound financial condition was insufficient to support commission's conclusion that gas rates were reasonable, just and nondiscriminatory, where the commission adopted prudent investment theory of rate regulation but did not subject issue of rate of return to inquiry at the hearing. D.C. Code 1940, §§ 43-301, 43-705. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

Gas rates fixed by Public Utilities Commission of District of Columbia, to be valid, must enable company to operate successfully, to maintain its financial integrity to attract capital, and to compensate its investors for risks assumed. Washington Gas Light Co. v. Public Utilities Commission of District of Columbia, 55 F.Supp. 627, 1944 U.S. Dist. LEXIS 2254 (D.D.C1944).

Gas company had initial responsibility of demonstrating reasonableness of above-the-line charges to its ratepayers. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

Where initial order approving contract to supply steam and chilled water services and setting rates specifically provided that rate for gas used would be the same as that charged utility's interruptible gas customers and providing gas to the contractee required essentially the same expenditure of effort by utility as was required to provide gas to interruptible customers in general and was supplied on similar terms and conditions, determination of Public Service Commission, on request for rate increase, that increase in price of interruptible gas, including a profit factor, was an element to be considered in determining whether to permit increase in steam and chilled water rates was not arbitrary or unreasonable. Watergate Improv. Associates v. Public Service Com., 326 A.2d 778, 1974 D.C. App. LEXIS 275 (1974).

In general.

A commission, in reaching decision concerning reasonable rate of return for power company under the prudent investment theory of rate regulation, must make findings upon underlying issues of return necessary to service company's outstanding funded debt and its preferred stock, return necessary to attract investors in common stock, and return on funded debts, preferred stock, and common stock of other public utilities having a risk factor similar to that of the company, and upon issue whether local conditions, economic conditions generally, and risk factor have remained static since determination of rate of return in a previous proceeding involving the company. D.C. Code, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

The Public Service Commission's (PSC) duty to require nondiscriminatory utility charges is deliberately broad and gives to the Commission authority to formulate its own standards and to exercise its rate-making function free from judicial interference, provided the rates fall within a zone of reasonableness which assures that the Commission is safeguarding the public interest, that is, the interests of both investors and consumers. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

The Public Service Commission (PSC) enjoys wide latitude in designing different customer classes for the purpose of assigning different rates. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

When setting rates, the Public Service Commission (PSC) is permitted to consider a range of factors in addition to the cost of service to each class. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

The question of unjust discrimination in customer classification for rate-making is not a mere question of fact; the selection of classification criteria is, in large measure, a question of regulatory policy committed to the informed discretion of the Public Service Commission (PSC). Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

The Public Service Commission (PSC) is not obliged to equalize the returns from different customer classes, and it may classify customers on the basis of factors other than cost of service, including the nature of their use of the service. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

The Public Utilities Commission (PSC) may modify policy choices so long as it explains the basis for the change. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

While regulation does not guarantee that an electric utility will achieve its projected revenues, it must provide the utility with a reasonable opportunity to earn a rate of return sufficient to maintain its financial integrity, to attract necessary capital at reasonable cost and to compensate investors fairly for the risks they have assumed, while protecting relevant public interests; rate making involves a delicate balancing of investor and consumer interests. D.C. Code §§ 43-301, 43-401, 43-411; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Realistic electricity rate making in today's economic climate must take into account the lengthening delays occasioned by the regulatory processes, while recognizing the need for preserving an appropriate balance between investor and consumer interests; regulatory lag may not be arbitrarily cited in an effort to justify failure to strike the needed balance by utilizing the utility's most recent historical data of record. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

General principle precluding a utility from charging higher rates in the future in order to recoup past losses did not preclude imposition of a surcharge to recover revenues lost by electric utility while rate order, which was found to be arbitrary and unreasonable, was in effect; losses occurred after fair rate of return had been determined and lost revenues were shown, by abundant evidence, to have been result of arbitrary and unreasonable rulings of Public Service Commission; imposition of surcharge to recoup past losses would not constitute retroactive rate making. D.C. Code §§ 1-1510(1), 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Although surcharge could be imposed to recover revenues lost by electric utility while inadequate rate order was in effect, Public Service Commission was to determine whether surcharge was to be offset by any unusually high revenues experienced because of moderately warmer summer and uniquely colder winter while the challenge rate was in effect. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Interjurisdictional rates.

Where power company's rates in District of Columbia are arrived at by formulating schedules on system-wide basis, extending into other jurisdictions, rates must be supported also by findings of similar conditions pertinent to ratefixing where the other rates are similar or, where other rates are different, by findings of other relevant economic conditions which justify, on a rational basis, the District rates in relation to the other rates, and, if this cannot be done, it would seem necessary to resort to allocation. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Where power company served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, ascertainment of rate base on basis of system-wide operations of the well integrated power company without allocation of its properties, costs, or revenues to the different jurisdictions, served was not illegal in itself nor upon facts peculiar to power company's case. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-705, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Where power company served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, use by Public Utility Commission of District of Columbia of power company's system-wide revenues and revenue needs as part of process of reaching approved rates for District of Columbia was proper. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Where problem of determining rate for power company lies across jurisdictional lines and is not solved by the permissible formulae of allocating, as between jurisdictions, either properties, costs, and revenues, or costs and revenues, method which is adopted must be rationally manifested in findings and conclusions, the findings grounded in evidence and the conclusions grounded in evidence and reasoning, which enable the court to support the rates for one jurisdiction alone. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Where power company served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, and system-wide method was pursued in determining rates for District of Columbia consumers, such rates would have to be reasonable, just, and nondiscriminatory as a part of, or in relation to, system rates contained in schedules for areas and services beyond jurisdiction of Public Utility Commission of District of Columbia so that District consumers would not subsidize non-District consumers or vice versa. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Presumptions and burden of proof.

In proceeding by power company, which served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, and which was also subject to regulation by other commissions, including Federal Power Commission, before Public Utility Commission of District of Columbia for rate increase, wherein power company's customer, a District of Columbia transit company, intervened as an interested party, burden upon

customer to sustain its attack upon order granting rate increase was carried where findings rationally manifesting the method used in determining the rates, essential to adequate review, were lacking. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power carried presumption of validity, and those who would upset the rate orders had heavy burden of making a convincing showing that orders were invalid because unjust and unreasonable. D.C. Code 1940, §§ 43-705, 43-706. Leeman v. Public Utilities Commission of District of Columbia, 104 F.Supp. 553, 1952 U.S. Dist. LEXIS 4351 (D.D.C1952).

Rate-making orders, as the product of expert judgment, are presumptively valid; petitioner challenging order carries heavy burden of demonstrating clearly and convincingly a fatal flaw in action taken. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

Rate base.

For electric utility rate-making purposes, the rate base multiplied by the rate of return, with necessary adjustments for income tax liability, determines the revenue requirements; "rate base" being defined as the value of the utility's property used and useful in the public service minus accrued depreciation. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Reasonableness of rates.

Telephone company's tariff amendment permitting customers with home-based businesses to pay residential rates, if the predominant or primary use was domestic, even if the business use was more than incidental, could be approved as nondiscriminatory even without call volume data; the Public Service Commission (PSC) was not required to collect such data, relied on reasonable criteria for charging residential rates based on residential location, primary domestic use as reported by the customer, and a residential, rather than business, directory listing, was not obliged to equalize the returns from different customer classes, and could classify customers on the basis of factors other than cost of service, including the nature of their use of the service. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

The basic reasonableness inquiry with regard to public utility rates is simply whether customers have paid different amounts for the same service under the same circumstances. Office of the People's Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

From the investor standpoint, courts have defined the lower boundary of the zone of reasonableness for a rate set by the Public Service Commission as one which is not confiscatory in the constitutional sense, and from the consumer standpoint, the upper boundary cannot be so high that the rate would be classified as exorbitant. D.C. Code 1973, §§ 43-301, 43-401, 43-411. Metropolitan Washington Bd. of Trade v. Public Service Com., 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

In determining whether an electricity rate is "just and reasonable," it is the result reached and not the method employed that is controlling. D.C. Code §§ 43-301, 43-401, 43-411, 43-705; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Electricity rate order was unjust and unreasonable where it deprived utility of opportunity to earn a fair rate of return by improperly disregarding the latest relevant historical data of record pertaining to its operations, in that Public Service Commission refused to utilize most recent test period in the record, failed to account for continuing attrition and refused to recognize certain known changes which occurred after the original proposed test period. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

To be "just and reasonable," electricity rates must be set at a level that permits the utility to earn a fair rate of return on its investment. D.C. Code §§ 43-301, 43-401, 43-411; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

No single formula or combination of formulas limits a regulatory commission's power to set "just and reasonable" electricity rates; however, a commission is obliged to make pragmatic adjustments where appropriate circumstances exist and courts may intervene only on a "clear showing" of a due process violation and if the rate order, viewed in its entirety, produces no arbitrary result, judicial inquiry is to be terminated. D.C. Code §§ 43-301, 43-401, 43-411, 43-705; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Remand.

Court of Appeals, having held erroneous orders entered by commission, in proceeding by power company for rate increase wherein power company's customer intervened as an interested party, would direct District Court to enter judgment (1) requiring parties to segregate on their accounts, amounts involved in

rate increase authorized by erroneous orders, and (2) remanding case to commission for further administrative proceedings. D.C. Code, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

In proceeding by power company, which served District of Columbia and other jurisdictions, before Public Utility Commission of District of Columbia for rate increase, case would be remanded to commission to make further findings concerning return necessary to service outstanding funded debt and preferred stock and to attract investors in common stock and concerning return on such debt and stock of other similar public utilities and changes in local and economic conditions and risk factor since last determination of rate of return. D.C. Code, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

District of Columbia Public Service Commission failed to establish utility rates on basis of reliable, probative and substantial evidence when, in ruling that shareholders of utilities alone should benefit from capital gains realized by utilities on sale of land no longer used in delivering service to public, Commission failed to advance affirmative, particularized reasons justifying such treatment of capital gains; remand was therefore required for clarification of Commission's ruling. D.C. Code §§ 1-1501 et seq., 1-1509(b, e), 11-722, 43-301, 43-411, 43-704, 43-705, 43-706. Washington Public Interest Organization v. Public Service Com., 393 A.2d 71, 1978 D.C. App. LEXIS 335 (1978), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3483 (1979).

Review.

The statutory authority of the Court of Appeals to review questions of law implies necessity for making findings, in proceeding to determine rates for power company, rationally manifesting method used in determining such rates. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

The responsibility for setting utility rates lies with Public Service Commission, not with reviewing court. Chesapeake & Potomac Tel. Co. v. Public Service Com., 498 A.2d 1167, 1985 D.C. App. LEXIS 502 (1985).

Any rate order of Public Service Commission is presumptively valid and will be reversed only upon a convincing showing that Commission failed to comply with statutory criteria. Chesapeake & Potomac Tel. Co. v. Public Service Com., 498 A.2d 1167, 1985 D.C. App. LEXIS 502 (1985).

So long as rate order of Public Service Commission is within a zone of reasonableness, it is insulated from judicial review, provided that Commission has carried its burden of showing fully and clearly why it has taken the particular rate-making action. Chesapeake & Potomac Tel. Co. v. Public Service Com., 498 A.2d 1167, 1985 D.C. App. LEXIS 502 (1985).

Public Service Commission, not the Court of Appeals, has responsibility for setting utility rates and establishing rate designs; in doing so, however, it must arrive at a fair balance between competing consumer and investor interests. D.C. Code 1981, §§ 43-501, 43-601, 43-611, 47-2501. Washington Metropolitan Area Transit Authority v. Public Service Com., 486 A.2d 682, 1984 D.C. App. LEXIS 583 (1984).

It is Public Utilities Commission, not court, which has responsibility for setting utility rates and establishing rate designs. D.C. Code 1981, §§ 43-501, 43-601, 43-611. People's Counsel of District of Columbia v. Public Service Com., 472 A.2d 860, 1984 D.C. App. LEXIS 316 (1984).

Public Service Commission, not the Court of Appeals, has the sole responsibility for balancing consumer and investor interests in designing rate structures and approving specific charges. D.C. Code 1981, §§ 43-501, 43-601, 43-611. Potomac Elec. Power Co. v. Public Service Com'n of Dist. of Columbia, 457 A.2d 776, 1983 D.C. App. LEXIS 325 (1983).

While choice of rate design, within wide bounds, is for Public Service Commission to make, standards for judging where bounds lie, i.e., what is discriminatory, are for court to establish. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

Statutory authority of the Public Service Commission to establish rate design and to set specific utility rates is deliberately broad and gives the Commission authority to formulate its own standards and to exercise its ratemaking function free from judicial interference, provided the rates fall within a zone of reasonableness which assures that the Commission is safeguarding the public interest, that is, the interests of both investors and consumers. D.C. Code 1973, §§ 43-301, 43-401, 43-411. Metropolitan Washington Bd. of Trade v. Public Service Com., 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

Sole rate-making authority in electric utility rate cases is vested in Public Service Commission; Court of Appeals is not to substitute its judgment for that of the Commission; even though the Court might arrive at somewhat different decision than did the Commission, if there is substantial evidence to support Commission's findings and conclusions, the Court must affirm. D.C. Code § 43-706. Potomac

Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

Appeal of 1975 electric utility rate order was not moot despite issuance of 1976 order. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

Rate order, as "product of expert judgment," is presumptively valid and should be upheld unless petitioner makes convincing showing that it fails to meet statutory criteria. D.C. Code §§ 11-722, 43-301, 43-411, 43-705, 43-706. Washington Public Interest Organization v. Public Service Com., 393 A.2d 71, 1978 D.C. App. LEXIS 335 (1978), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3483 (1979).

Telecommunications rates.

In determining whether telephone rates are just and reasonable, Public Service Commission may consider whether price at which utility has purchased materials or equipment from an affiliated company is reasonable. Atlantic Tel. Co. v. Public Service Com., 390 A.2d 439, 1978 D.C. App. LEXIS 489 (1978).

§ 34-912. Expenses of investigation to be borne by utility; deposit for costs; limitation of expenditures in hearings; reimbursement fee.

(a)(1) There are established within the District of Columbia treasury 2 fiduciary funds to be known as the "Public Service Commission Agency Fund" and the "Office of the People's Counsel Agency Fund". These funds shall be accounted for under procedures established pursuant to subchapter V of Chapter 3 of Title 47, or any other applicable law. The Public Service Commission Agency Fund shall be used exclusively by the Commission for the payment of its expenses and the Office of the People's Counsel Agency Fund shall be used exclusively by the Office for the payment of its expenses arising from any investigation, valuation, revaluation, or proceeding of any nature by the Commission of or concerning any public utility operating in the District of Columbia, and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding or from any other order or action of the Commission. Expenses shall be deemed to include, but not be limited to, the cost of independent contractors, such as attorneys. Funding for both funds shall be provided through a special franchise tax which shall be paid by each public utility being investigated, valued, revalued, or otherwise affected through a proceeding of the Commission, subject to the limitations enumerated in paragraph (3) of this subsection. Any deposits made through this special franchise tax to each agency fund by any public utility may be amortized over whatever period the Commission shall deem proper and shall be allowed for in the rates to be charged by each utility.

(2) When any such investigation, valuation, revaluation, or other proceeding of any nature is begun by the Commission or the Office of the People's Counsel, either the Commission or the Office of the People's Counsel shall, according to rules issued pursuant to paragraph (5) of this subsection, determine from time to time the reasonable and necessary expenditures required to fully carry out their respective statutory responsibilities with regard to such investigation, valuation, revaluation, or other proceeding. Once the Commission has determined its requirements, the Commission may call upon the utility in question from time to time for the prompt deposit of the

special franchise tax deposit to the Public Service Commission Agency Fund determined by the Commission to be reasonable and necessary, subject to the limitations provided in paragraph (3) of this subsection. Once the Office of the People's Counsel has determined its requirements, the Office shall submit its determination for review by the Commission. Based on the record established by the Office's determination of its requirement for special franchise tax funds, the Commission shall review the Office's determination solely to determine whether it is consistent with the statutory authority of and rules issued by the Office, whether it is supported by findings, whether those findings are sustained by substantial evidence in the record submitted to the Commission, and whether it is within the limitations enumerated in paragraph (3) of this subsection. The Commission shall complete its review within 10 days (excluding Saturdays, Sundays, and holidays) of receipt of the Office's determination. After completing its review, the Commission shall either call upon the utilities for the prompt deposit of the special franchise tax deposit to the Office of the People's Counsel Agency Fund or inform the Office in writing of any specific failures of the Office to meet the Commission's enumerated standard of review. Within 10 days (excluding Saturdays, Sundays, and holidays) of any resubmission by the Office, the Commission shall similarly act. If the Commission still notes a failure to meet its standard of review, the Office may appeal to the District of Columbia Court of Appeals under procedures enumerated in § 34-605. If the Commission fails to take action on any submission or resubmission by the Office within the required time frame, the submission or resubmission shall be deemed approved, and the Commission shall carry out its duty to obtain the requested deposit. All such sums shall be deposited in the District of Columbia Treasury. Those sums which are to be used by the Commission for its expenses shall be deposited in the Public Service Commission Agency Fund and those sums which are requested by the Commission on behalf of the Office shall be deposited in the Office of the People's Counsel Agency Fund, to be disbursed in the manner provided for by law for other expenditures of the government of the District of Columbia. The balance of any sums for a specific proceeding remaining in each fund after a 12-month period in which actual expenditures for that proceeding were 5% or less of the fund balance, shall be returned to the utility which made the deposit. The balance of any sums for a specific proceeding remaining after the final disposition of the proceeding or any litigation arising therefrom shall be returned promptly to the utility which made the deposit.

(3) In any valuation or rate case, neither the Commission nor the Office may individually seek special franchise tax deposits of more than one-quarter of one percent of the jurisdictional valuation of the public utility which is the subject of the proceeding. In all other investigations docketed as formal proceedings by the Commission, neither the Commission nor the Office shall individually seek special franchise tax deposits in any one year of more than one-twentieth of one percent of the jurisdictional valuation of each public utility which is the subject of one or more investigations during that year; provided, that the Office may seek special franchise tax deposits of not more than one-quarter of one percent of the jurisdictional valuation of the public

utility which is the subject of the proceeding in any instance where the public utility alleges in a proceeding before a federal court or federal agency that the bankruptcy of a company with whom it has contracts may have adverse consequences to ratepayers of the District of Columbia. For the purposes of this paragraph, the Commission may determine the jurisdictional valuation of the public utility which is the subject of the formal proceeding whenever it deems necessary, in accordance with § 34-1106, based on the operations of the utility over whatever 12-month period it deems appropriate.

(4) Should any public utility fail to make any special franchise tax deposit ordered by the Commission pursuant to this section, the Commission shall certify this failure to the Mayor for collection pursuant to the provisions of subchapter XIII of Chapter 18 of Title 47.

(5) The Commission and the Office shall issue rules reasonable and necessary to provide procedures for the determination of their needs for funds from their respective agency funds. These rules shall include provisions for full disclosure of all special franchise tax deposits prior to the issuance of the deposit orders by the Commission on its own behalf and on behalf of the Office. Full disclosure shall include, but not be limited to, the name of each contractor to be hired, the qualifications of each contractor, a brief description of the work to be done by each contractor, the number of persons employed by each contractor and the hourly rate to be charged by each person thus employed, and the estimated value of each contract.

(6) The District of Columbia Auditor shall review the amounts deposited and disbursed by the Commission and the Office under this section and shall issue a report to the Mayor and the Council on each agency fund on a biennial basis.

(7) The Commission and the Office shall issue reports to the Mayor and the Council by February 15 of the succeeding fiscal year on deposits to and disbursements from their respective agency funds during each fiscal year. Copies of the reports shall provided to each public utility.

(8) Neither the staff of the Commission nor any consultant hired by the Commission shall appear as a party to, advocate, or intervenor in any Commission proceeding. Individual staff members and consultants may appear on behalf of the Commission as expert witnesses at the direction of the Commission to present testimony on selected issues after the Commission makes a finding of the issues to be decided in the proceeding and a determination that testimony in addition to that to be presented by the parties or intervenors is required by the Commission to develop a complete record. The staff members and consultants shall not advocate a position on the merits. Expert witnesses may be represented by counsel appointed by the Commission for this purpose. The General Counsel or the General Counsel's designee may, at the direction of the Commission and on behalf of the Commission, cross-examine any witness in any proceeding before the Commission.

(9)(A) Each public utility shall furnish the Commission a statement of all costs of participation to be incurred in each Commission and related court proceeding or in complying with the provisions of this title. The statement shall include, but is not limited to, the projected costs and expenses both direct

and indirect, an allocation of all projected internal overhead, expenses, and salaries, the name of each contractor to be hired and the value of each contract. This statement shall be compiled and filed with the Commission, with a copy to the Office of People's Counsel, when filing a request for a change in rates or services with the Commission. Each public utility shall also file annually with the Commission, with a copy to the Office, a statement of costs for the previous fiscal year no later than 3 months after the completion of the fiscal year.

(B) The records to be kept and the information presented in the annual statement shall be by case, matter, investigation, or proceeding and shall describe all costs and expenses, external and internal, retained and employed, direct and indirect, including an allocation of all internal overhead, expenses, and employee salaries to each proceeding or matter. If an allocation of costs is made, the report shall fully explain the allocation method used. If any services were provided to the public utility by consultants or contractors, copies of the relevant contracts shall be provided with the annual statement. The Office of the People's Counsel may submit to the public utility a request for further information concerning the annual statement.

(b)(1) All amounts appropriated for the Public Service Commission and the Office of People's Counsel for each fiscal year, except for amounts appropriated for carrying out the Commission's duties under Chapter 36 [repealed] of Title 3, shall be repaid during such fiscal year by the natural gas suppliers, electricity suppliers and telecommunications services providers as a reimbursement fee.

(2) The amount of the reimbursement fee to be paid by each natural gas supplier, electricity supplier, and local exchange carrier, that is not the incumbent local exchange carrier as defined in this chapter, authorized to provide service in the District, and the formula through which such an amount shall be annually established, shall be determined by the Public Service Commission.

(3) The amount of the reimbursement fee to be paid by each public utility other than a local exchange carrier subject to paragraph (2) of this subsection shall be equal to the product of the amounts appropriated, less the amount to be reimbursed by the providers subject to paragraph (2) of this subsection, multiplied by the fraction, as determined by the Mayor, represented by the revenues of such public utility derived from utility operations in the District of Columbia that are regulated by the Public Service Commission during the immediately preceding fiscal year (or other 12-month period as the Mayor may designate), divided by the gross revenues of all public utilities from utility operations in the District of Columbia during such period. The fee shall be paid by the public utilities during such fiscal year to the Treasurer of the District of Columbia, at such time or times and in such manner as the Mayor by regulation may require. If the total amount paid or obligated by the Public Service Commission and the People's Counsel during such fiscal year pursuant to appropriations for such fiscal year is less than the amounts appropriated by more than 5%, the Mayor shall refund to or credit each public utility and electricity supplier with such part of the difference, rounded to the nearest dollar, as equals the product of the difference multiplied by the fraction, as set

forth above, representing the gross revenue of the public utility or electricity supplier relative to the gross revenues of all public utilities, natural gas suppliers, and electricity suppliers.

(4) Repealed.

(5) The funding provisions of subsection (a) of this section shall not apply to local exchange carriers that are not the incumbent local exchange carrier; except, that such providers may be assessed for a proportionate share of the costs of the proceeding required under § 34-2002(k), up to a maximum amount of $25,000 each.

(6) Repealed.

(7)(A) For any proceeding required to arbitrate disputes between carriers pursuant to the procedures established in this chapter, the Commission may assess, on a nondiscriminatory basis, each local exchange carrier who is a participant in any dispute, an amount equal to the actual cost to the Commission of conducting the arbitration, and the Commission shall present to the Council along with its annual budget request, an accounting of the expenditures of the PSC for each proceeding.

(B) For any proceeding, other than the proceeding called for in § 34-2002(k) and the proceedings referenced in subparagraph (A) of this paragraph, which the Commission may determine is necessary to carry out the purposes of this chapter, the Commission and, when appropriate to its mission, the Office of the People's Counsel, may assess, on a nondiscriminatory basis, the parties who are participants in the proceeding in an amount equal to the actual costs of the proceeding, and the Commission and the Office of the People's Counsel shall present to the Council along with each agency's annual budget request, an accounting of the expenditures of each agency for each proceeding.

(8) Five dollars of the license tax paid for each passenger vehicle for hire by common carriers under § 47-2829(d), shall be deemed the reimbursement fee payable by such common carriers under this subsection.

(9) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue regulations to carry out this subsection, and may delegate all or any of the authority vested in the Mayor by this subsection to such agency or agencies, including the Public Service Commission and the Office of the People's Counsel, as the Mayor may deem appropriate.

(10) A public utility or service provider that fails to comply with a reimbursement order issued by the Commission pursuant to this section shall be subject to the penalty provisions set forth in § 34-706.

(c) Nothing in this chapter shall be construed to prevent the Commission from using the Public Service Commission Agency Fund for the payment of any and all expenses that it incurs in the performance of its duties.

(Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 42; Mar. 3, 1927, 44 Stat. 1351, ch. 304; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 3; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; Jan. 2, 1975, 88 Stat. 1976, Pub. L. 93-614, § 2; June 15, 1976, D.C. Law 1-70, title VI, § 606, 23 DCR 553; Sept. 13, 1980, D.C. Law 3-88, § 2, 27 DCR 3004; Aug. 10, 1984, D.C. Law 5-104, §§ 2, 3(b), 31 DCR 3037; Mar. 14, 1985, D.C. Law 5-153, § 3(e), 31 DCR 6440; July 17, 1985, D.C.

Law 6-9, § 2(b), 32 DCR 2961; Aug. 1, 1996, D.C. Law 11-152, § 403, 43 DCR 2978; Sept. 9, 1996, D.C. Law 11-154, § 9, 43 DCR 3736; Apr. 20, 1999, D.C. Law 12-263, § 13(c)(1), 46 DCR 2111; May 9, 2000, D.C. Law 13-107, § 201(g), 47 DCR 1091; Mar. 16, 2005, D.C. Law 15-227, § 17(e), 51 DCR 10549; Apr. 12, 2005, D.C. Law 15-342, § 303(e), 52 DCR 2346; Oct. 20, 2005, D.C. Law 16-33, § 2002, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, §§ 5(j), 58(b), 53 DCR 6794; Sept. 24, 2010, D.C. Law 18-223, § 2222(a), 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 2082(b), 58)

Cross references. — Budget and financial management, fund accounting, organization of fund structure, see § 47-373.

Creation of Public Service Commission, Office of People's Counsel appropriations, see § 34-805.

Office of the People's Counsel, creation, powers and duties, see § 34-804.

Real property tax sales, refunds, taxes erroneously paid, see § 47-1317.

Taxicab commission fund established, see § 50-320.

Valuation of public utilities by Commission, see § 34-1105 et seq.

Prior Codifications. — 1981 Ed., § 43-612. 1973 Ed., § 43-412.

Effect of amendments. — D.C. Law 13-107 in subsec. (a)(3) substituted "public utility" for "company"; in subsec. (b)(1) substituted "electricity suppliers" for "public utilities"; substituted in subsec. (b)(2) "each electricity supplier and local" for "each local"; and, rewrote the third sentence of subsec. (b)(3) which formerly provided: "If the total amount paid or obligated by the Public Service Commission and the People's Counsel during such fiscal year pursuant to appropriations for such fiscal year is less than the amounts appropriated by more than 5%, the Mayor shall refund to each public utility or credit each public utility with such part of the difference, rounded to the nearest dollar, as equals the product of such difference multiplied by the fraction, as set forth above, representing the gross revenue of such public utility relative to the gross revenues of all public utilities."

D.C. Law 15-227, in subsec. (b), substituted "natural gas suppliers, electricity suppliers" for "electricity suppliers" in par. (1), substituted "natural gas supplier, and electricity supplier" for "electricity supplier" in par. (2), and substituted "natural gas suppliers, and electricity suppliers" for "electricity suppliers" in the third sentence of par. (3).

D.C. Law 15-342, in subsec. (a)(2), substituted "The balance of any sums for a specific proceeding remaining in each fund after a 12-month period in which actual expenditures for that proceeding were 5% or less of the fund balance, shall be returned to the utility which made the deposit. The balance of any sums for a specific proceeding remaining after the final disposition of the proceeding or any litigation arising therefrom shall be returned promptly to the utility which made the deposit." for "Any deposits made through this special franchise tax to each agency fund by any public utility may be amortized over whatever period the Commission shall deem proper and shall be allowed for in the rates to be charged by each utility."; and rewrote subsecs. (a)(7) which had read:

"(7) The Commission and the Office shall issue reports to the Mayor and the Council by January 1 of the succeeding fiscal year on deposits to and disbursements from their respective agency funds during each fiscal year. The reports shall include, but not be limited to, the following information:

"(A) The dollar amount of each deposit;

"(B) The total amount disbursed for each proceeding;

"(C) The name of each contractor hired, the expertise of each contractor, the type of work performed by each contractor, the hourly rate of each contractor, and the total amount received by each contractor, by proceeding;

"(D) The amount reimbursed to the utility companies, by proceeding; and

"(E) The dollar amount of contracts awarded to minority and District-based firms."

D.C. Law 16-33, in subsec. (a)(3), substituted "special franchise tax deposits in any one year of more than one- twentieth of one percent of the jurisdictional valuation of each public utility which is the subject of one or more investigations during that year; provided, that the Office may seek special franchise tax deposits of not more than one-quarter of one percent of the jurisdictional valuation of the public utility which is the subject of the proceeding in any instance where the public utility alleges in a proceeding before a federal court or federal agency that the bankruptcy of a company with whom it has contracts may have adverse consequences to ratepayers of the District of Columbia." for "special franchise tax deposits in any one year of more than one-twentieth of one percent of the jurisdictional valuation of each public utility which is the subject of one or more investigations during that year".

D.C. Law 16-191, in subsec. (b), validated previously made technical corrections.

D.C. Law 18-223, in subsec. (b)(5), deleted the last sentence which had read: "Any such amount shall be credited against the reimbursement fee of any such LEC pursuant to paragraph (2) of this subsection, in subsequent years."; repealed subsec. (b)(6); and added subsec. (b)(10). Prior to repeal, subsec. (b)(6) read as follows: "(6) Any local exchange carrier, other than the incumbent local exchange carrier, that seeks certification by the Commission within 5 years of September 9, 1996 shall be assessed in an amount equal to the amount assessed pursuant to paragraph (5) of this subsection, and that assessment shall be reimbursed by the Commission, in equal amounts to the incumbent local exchange carrier, and each local exchange carrier whose authorization from the Commission to provide local exchange service was received during the period in which the proceeding required under § 34-2002(k) took place."

D.C. Law 19-21 repealed subsec. (b)(4), which formerly read:

"(4) Notwithstanding the requirements of paragraph (2) of this subsection, in the case of a local exchange carrier that is not the incumbent local exchange carrier, the amount of the fee payable in the first year such service is provided shall be no less than $25,000."

Emergency legislation. — For temporary amendment of section, see § 403 of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 303 of the Fiscal Year 1996 Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

For temporary (90-day) amendment of section, see § 3(1) of Public Service Commission Independent Authority Emergency Amendment Act of 1999 (D.C. Act 13-52, April 6, 1999, 46 DCR 3638).

For temporary (90 day) amendment of section, see § 303(e) of Omnibus Utility Emergency Amendment Act of 2005 (D.C. Act 16-12, January 28, 2005, 52 DCR 2945).

For temporary (90 day) amendment of section, see § 2002 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2222(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 1-70. — Law 1-70 was introduced in Council and assigned Bill No. 1-229, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings and reconsiderations of final reading on February 20, 1976, March 11, 1976 and April 6, 1976, respectively. Signed by the Mayor on April 20, 1976, it was assigned Act No. 1-106 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-88. — Law 3-88 was introduced in Council and assigned Bill No. 3-274, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 3, 1980 and June 17, 1980, respectively. Signed by the Mayor on July 2, 1980, it was assigned Act No. 3-206 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-104. — Law 5-104 was introduced in Council and assigned Bill No. 5-411. The Bill was adopted on first and second readings on April 30, 1984, and May 15, 1984, respectively. Signed by the Mayor on June 6, 1984, it was assigned Act No. 5-145 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-153. — For legislative history of D.C. Law 5-153, see Historical and Statutory Notes following § 34-706.

Legislative history of Law 6-9. — For legislative history of D.C. Law 6-9, see Historical and Statutory Notes following § 34-909.

Legislative history of Law 11-152. — Law 11-152, the "Fiscal Year 1996 Budget Support Act of 1996," was introduced in Council and assigned Bill No. 11-655, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 2, 1996, and May 7, 1996, respectively. Signed by the Mayor on May 28, 1996, it was assigned Act No. 11-279 and transmitted to both Houses of Congress for its review. D.C. Law 11-152 became effective on August 1, 1996.

Legislative history of Law 11-154. — Law 11-154, the "Telecommunications Competition Act of 1996," was introduced in Council and assigned Bill No. 11-258, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 21, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 25, 1996, it was assigned Act No. 11-300 and transmitted to Congress for its review. D.C. Law 11-154 became effective September 9, 1996.

Legislative history of Law 12-263. — Law 12-263, the "Residential Real Property Seller Disclosure, Funeral Services Date Change, and Public Service Commission Independent Procurement Authority Act of 1998," was introduced in Council and assigned Bill No. 12-648, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 6, 1998, and November 10, 1998, respectively. Vetoed by the Mayor on December 29, 1998, Council overrode the veto on January 5, 1999, and the Bill was assigned Act No. 12-625 and transmitted to both Houses of Congress for

its review. D.C. Law 12-263 became effective on April 20, 1999.

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-908.

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-208.

Legislative history of Law 15-342. — For Law 15-342, see notes following § 34-401.

Legislative history of Law 16-33. — Law 16-33, the "Fiscal Year 2006 Budget Support Act of 2005", was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

For Law 16-191, see notes following § 34-209.

For Law 18-223, see notes following § 34-706.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 34-706.

Short title. — Short title of subtitle A of title II of Law 16-33: Section 2001 of D.C. Law 16-33 provided that subtitle A of title II of the act may be cited as the Office of People's Counsel Amendment Act of 2005.

Short title: Section 2221 of D.C. Law 18-223 provided that subtitle S of title II of the act may be cited as the "Public Service Commission Amendment Act of 2010".

Editor's notes. — The phrase "this chapter" was substituted for "this act" in (c), pursuant to instructions from Codification Counsel, notwithstanding that some sections herein were not part of the organic act.

Former § 43-613 1981 Ed., D.C. Law 3-88, § 3, 27 DCR 3004, provided for application of the provisions of subsec. (b) of this section with respect to such portion, if any, of fiscal year 1980 beginning on September 13, 1980, and ending on September 30, 1980, and with respect to each fiscal year thereafter.

Former § 43-910 1981 Ed., 49 Stat. 885, ch. 742, § 4, provided that if any provision this section or the application to any person or circumstances is held invalid, the invalidity of the remainder of said sections and of the application of such provision to other persons and circumstances shall not be affected thereby.

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Freedom of Information Act (FOIA) did not require alleged proprietary local revenue data, collected from public utilities by Public Utility Commission, to be published in Commission's notice of reimbursement fees to be paid by the utilities, since documents alleged to contain proprietary information were required to be deemed excepted from disclosure under FOIA until a challenge was resolved as to the information's proprietary nature; requiring publication of the revenue data in notice of reimbursement fees was not the only way to determine if the Commission correctly applied the statutory reimbursement formula. Office of the People's Counsel v. PSC, 955 A.2d 169, 2008 D.C. App. LEXIS 439 (2008).

Declaratory order.

Public Utility Commission could treat filing by Office of the People's Counsel (OPC), requesting a determination that Commission was required to publish local revenue data collected from public utilities in Commission's notice of reimbursement fees to be paid by the utilities, as a request for a declaratory order, rather than a request for proprietary information determination request pursuant to regulation setting forth procedures for challenging the appropriateness of a claim that information is proprietary or confidential; regulation permitted challenges to a proprietary claim only in an ongoing matter, and Commission had already proposed, finalized and collected the reimbursement fee without objection during the comment period. Office of the People's Counsel v. PSC, 955 A.2d 169, 2008 D.C. App. LEXIS 439 (2008).

Definitions.

— In general.

Telephone tariff rate proceeding which was conducted without formal hearing was not "rate case," but "other investigation," within meaning

of statute requiring regulated utilities to bear reasonable and necessary costs incurred by Public Service Commission and the Office of the People's Counsel. D.C. Code 1981,§§ 43-601(d), 43-608, 43-612, 43-612(a)(2, 3). Office of People's Counsel v. Public Service Com., 572 A.2d 410, 1990 D.C. App. LEXIS 56 (1990).

Term "valuation," as used in statute limiting the amount of expenses Public Service Commission may assess against a utility to a percentage of the utility's existing valuation, refers to a jurisdictional, not a systemwide, valuation. D.C. Code 1981, § 43-612(a). Washington Gas Light Co. v. Public Service Com., 455 A.2d 384, 1982 D.C. App. LEXIS 454 (1982).

— Rate cases, definitions.

A tariff rate proceeding must both set rates and conduct formal hearing in order to qualify as "rate case" within meaning of statute providing that regulated utility shall bear cost of various expenses of Office of the People's Counsel and Public Service Commission. D.C. Code 1981, §§ 43-601(d), 43-608, 43-612, 43-612(a)(2, 3). Office of People's Counsel v. Public Service Com., 572 A.2d 410, 1990 D.C. App. LEXIS 56 (1990).

Insofar as statute limiting the amount of expenses Public Service Commission may assess against a utility distinguishes between valuation and rate cases, the term "rate case" refers to general and specific rate cases, i.e., those proceedings in which all or some of the rates of a utility are set. D.C. Code 1981, § 43-612(a). Washington Gas Light Co. v. Public Service Com., 455 A.2d 384, 1982 D.C. App. LEXIS 454 (1982).

Due process.

District of Columbia's Utility Regulatory Assessment and Clarification Act requires stringent accounting by Office of People's Counsel for its assessments as well as adequate review by Public Service Commission, and therefore provides sufficient process to ensure that utilities' funds will not be taken without due process of law. U.S. Const.Amends. 5, 14; D.C. Code 1981, § 43-612(a), (a)(2, 5). Potomac Electric Power Co. v. District of Columbia Government, 651 F. Supp. 907, 1986 U.S. Dist. LEXIS 16007 (1986).

Public Service Commission (PSC) rule adopting revenue-based formula for assessing unregulated competitive electric suppliers, competitive natural gas suppliers, and competitive local exchange carriers (CLEC) was not unreasonable, arbitrary, or capricious. Wash. Gas Energy Servs., Petitioner v. D.C. PSC, 924 A.2d 296, 2007 D.C. App. LEXIS 236 (2007).

Equal protection.

Statutory provision requiring utility to bear expenses of investigation or revaluation proceedings by Public Utilities Commission as special franchise tax, and permitting utility to charge such expenses and interest to operating expenses, held not unconstitutional as denying equal protection. D.C. Code 1929, T. 26, § 65; U.S. Const. Amend. 14. Washington Ry. & Elec. Co. v. District of Columbia, 77 F.2d 366, 1935 U.S. App. LEXIS 4602 (1935).

Exemptions.

Freedom of Information Act (FOIA) did not require alleged proprietary local revenue data, collected from public utilities by Public Utility Commission, to be published in Commission's notice of reimbursement fees to be paid by the utilities, since documents alleged to contain proprietary information were required to be deemed excepted from disclosure under FOIA until a challenge was resolved as to the information's proprietary nature; requiring publication of the revenue data in notice of reimbursement fees was not the only way to determine if the Commission correctly applied the statutory reimbursement formula. Office of the People's Counsel v. PSC, 955 A.2d 169, 2008 D.C. App. LEXIS 439 (2008).

Expenses assessable.

— Attorney's fees, expenses assessable.

It is per se unreasonable for the Office of People's Counsel to hire lawyers to perform duplicative work and Public Service Commission may not assess fees arising from such work against the utility. D.C. Code 1981, §§ 43-612, 43-612(a). Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

Even where expenses are approved in advance, the mere submission of a contract containing vague "boilerplate" provisions is insufficient to justify the conclusion that attorney fees are reasonable such that Public Service Commission may issue deposit order assessing them against utility. D.C. Code 1981, §§ 43-612, 43-612(a). Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

When Public Service Commission conducts its review of requests by the Office of People's Counsel for assessment of attorney fees expenses against a utility, it must consider the appropriateness of the work in conjunction with the time involved and the rates charged, the nature of the proceeding, the quality of the representation, and the customary expenditures required for services in similar cases. D.C. Code 1981, §§ 43-612, 43-612(a). Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

It is indispensable that the Public Service Commission review requests by the Office of People's Counsel for attorney fees in accord with reasonable criteria and that its deposit orders reflect the precise reasons supporting

the approval of any amounts. D.C. Code 1981, §§ 43-612, 43-612(a). Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

— In general.

Public Service Commission (PSC) rule adopting revenue-based formula for assessing unregulated competitive electric suppliers, competitive natural gas suppliers, and competitive local exchange carriers (CLEC) did not contradict statute requiring the revenue-based formula for regulated public utilities; the PSC was not required to adopt different formula for unregulated suppliers. Wash. Gas Energy Servs., Petitioner v. D.C. PSC, 924 A.2d 296, 2007 D.C. App. LEXIS 236 (2007).

Although the process of calculating a reimbursement fee (an adjudication) may be retroactive in nature, the formula under which the assessments are calculated (the rule) may not be imposed retroactively. Wash. Gas Energy Servs. v. District of Columbia PSC, 893 A.2d 981, 2006 D.C. App. LEXIS 94 (2006).

Expenses which may be assessed against utilities by Public Service Commission may include supplies, equipment, and services. D.C. Code 1981, §§ 43-612, 43-612(a). Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

Expenses which were incurred under the sole direction of the Office of People's Counsel, if otherwise reasonable, are properly assessable against utilities by the Public Service Commission. D.C. Code 1981, §§ 43-612, 43-612(a). Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

In general.

Public Service Commission had authority to order utility to deposit franchise tax for "other investigations" even though Office of the People's Counsel had requested franchise tax as "rate case"; Commission had obligation to determine appropriate basis for Office of the People's Counsel's assessment. D.C. Code 1981, §§ 43-103, 43-612(a)(2, 3), 43-906. Office of People's Counsel v. Public Service Com., 572 A.2d 410, 1990 D.C. App. LEXIS 56 (1990).

Statute requiring publicly regulated utility to bear reasonable and necessary costs incurred by Public Service Commission and the Office of the People's Counsel in tariff rate proceedings gives Commission authority to amend Counsel's request for special franchise tax to determine appropriate basis for recovery; statute does not limit Commission to merely accepting or rejecting request. D.C. Code 1981, § 43-612(a)(2). Office of People's Counsel v. Public Service Com., 572 A.2d 410, 1990 D.C. App. LEXIS 56 (1990).

Statute establishing the Office of the People's Counsel does not authorize the Public Service Commission to assess the utilities it regulates for the fees of private attorneys retained by the People's Counsel in connection with Commission proceedings, or for the People's Counsel's extraordinary incremental operating expenses incurred in connection with such proceedings, in lieu of obtaining legislative appropriations in the usual way. D.C. Code 1981, §§ 43-204, 43-612, 43-612(a); Act, Dec. 15, 1926, § 1 et seq., 44 Stat. 920. Office of People's Counsel v. Public Service Com., 477 A.2d 1079, 1984 D.C. App. LEXIS 384 (1984).

Word "expenses" in the statute providing that expenses of Public Service Commission, including expenses of the Office of the People's Counsel, in investigation, valuation, revaluation or proceeding by the Commission shall be borne by public utility investigated must be read in light of section of the act providing for funds to be appropriated for the operating expenses of the Office of the People's Counsel and the section giving that Office express authority to employ employees, including attorneys, as are necessary, since interpretation which would allow the Office to recover costs of administrative expenses and of hired attorneys through assessment procedure would render the latter provisions of the act inoperative. D.C. Code 1981, § 43-612(a). Office of People's Counsel v. Public Service Com., 477 A.2d 1079, 1984 D.C. App. LEXIS 384 (1984).

For purposes of determining the reasonableness of consulting fees to be assessed against a utility, the reasonable hourly rate is that prevailing in the community for similar work, and it is the nature of the work rather than the person who performs it that should determine the range of appropriate hourly rates. D.C. Code 1981, §§ 43-612, 43-612(a). Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

It is not per se improper for Public Service Commission to approve expenses to be assessed against utility in advance of performance; rather, it is within the discretion of the Commission to determine when approval of a request for assessment of expenses must be delayed until after services are performed. D.C. Code 1981, §§ 43-612, 43-612(a). Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

What is required for expenses to be assessed against utilities by Public Service Commission are that such expenses are not already covered by appropriations and that such expenses are episodic, rather than ongoing. D.C. Code 1981, §§ 43-612, 43-612(a). Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

Judicial review.

Review of Public Service Commission's issuance of deposit orders assessing certain ex-

penses of the Commission and the Office of People's Counsel against utilities is limited to a determination of whether the Commission's decision is unreasonable, arbitrary, or capricious. D.C. Code 1981, §§ 43-612(a), 43-906. Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

Provided that Public Service Commission fulfills its duty of providing adequate findings and conclusions, review of its choice with regard to timing of requests for assessment of expenses against utility will be limited. D.C. Code 1981, §§ 43-612, 43-612(a). Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

Moot cases.

Question of whether special franchise tax assessed against telephone utility came under the Office of the People's Counsel's "other investigations" authority or under its "rate case" authority was not moot, even though Counsel was granted amount of tax requested, since issue was capable of repetition and yet tended to evade review. D.C. Code 1981, §§ 43-612, 43-612(a)(3). Office of People's Counsel v. Public Service Com., 572 A.2d 410, 1990 D.C. App. LEXIS 56 (1990).

Remand.

Remand of Public Service Commission's deposit orders was required, where record did not reveal whether the expenses involved were in fact episodic. D.C. Code 1981, §§ 43-612, 43-612(a). Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

Remand of Public Service Commission deposit order was required, where record did not reveal whether the expense involved was incurred in connection with the proceeding in which assessment was sought. D.C. Code 1981, §§ 43-612, 43-612(a). Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

Public Service Commission's deposit orders assessing expenses of the Office of People's Counsel against electric power company were required to be remanded, where the orders contained no statement of reasons supporting the allowance of the expenses. D.C. Code 1981, §§ 43-612(a), 43-906. Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

Request for determination.

Public Utility Commission could treat filing by Office of the People's Counsel (OPC), requesting a determination that Commission was required to publish local revenue data collected from public utilities in Commission's notice of reimbursement fees to be paid by the utilities, as a request for a declaratory order, rather than a request for proprietary information determination request pursuant to regulation setting forth procedures for challenging the appropriateness of a claim that information is proprietary or confidential; regulation permitted challenges to a proprietary claim only in an ongoing matter, and Commission had already proposed, finalized and collected the reimbursement fee without objection during the comment period. Office of the People's Counsel v. PSC, 955 A.2d 169, 2008 D.C. App. LEXIS 439 (2008).

Retroactive rulemaking.

Proposed rule on assessments against electricity suppliers, public utilities, and telecommunications services providers to cover budgets of Public Service Commission (PSC) and Office of People's Counsel (OPC) would be impermissibly retroactive as to completed fiscal years; statute authorizing PSC to promulgate formula for assessing suppliers did not permit retroactive rulemaking, but required amounts appropriated for each fiscal year to be repaid during the fiscal year. Wash. Gas Energy Servs. v. District of Columbia PSC, 893 A.2d 981, 2006 D.C. App. LEXIS 94 (2006).

A rule on assessments to cover budgets of Public Service Commission (PSC) and Office of People's Counsel (OPC) would not be made retroactive by PSC's use of those antecedent facts to make assessments; application of the rule (the formula) to calculate an assessment would require the PSC to rely on antecedent facts such as the amount of its previous budget and electricity suppliers' shares of the market, but would not make the rule itself retroactive. Wash. Gas Energy Servs. v. District of Columbia PSC, 893 A.2d 981, 2006 D.C. App. LEXIS 94 (2006).

Statement of commission.

Public Service Commission (PSC) met its statutory duty to receive, consider, and address in writing the most important objections to proposed rule to adopt revenue-based formula for assessing competitive electric suppliers, competitive natural gas suppliers, and competitive local exchange carriers (CLEC) to fund PSC; the PSC adequately considered and responded to gas supplier's comments objecting on the ground of lack of proportionality as applied to unregulated suppliers, and PSC could reasonably regard points about anti-competitive effect as subsidiary to supplier's main contention that unregulated suppliers were being unfairly assessed with expenses attributable to regulation of public utilities. Wash. Gas Energy Servs., Petitioner v. D.C. PSC, 924 A.2d 296, 2007 D.C. App. LEXIS 236 (2007).

Public Service Commission (PSC) must fully and carefully explain its ruling, but once it provides such explanation, petitioner challenging its order assumes heavy burden of demonstrating clearly and convincingly a fatal flaw in

action taken. D.C. Code 1981, § 43-906. Watergate E. v. District of Columbia Pub. Serv. Comm'n, 662 A.2d 881, 1995 D.C. App. LEXIS 137 (1995).

Although Public Service Commission is required to issue statement of findings and conclusions as to deposit orders assessing certain expenses of the Commission and the Office of People's Counsel against utilities, the degree of detail and discussion required with respect to such orders is not as great as that mandated in a rate case. D.C. Code 1981, §§ 43-612(a), 43-906. Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

Public Service Commission must provide a statement of reasons supporting its determination of reasonableness of consultant fees to be assessed against a utility. D.C. Code 1981, §§ 43-612, 43-612(a). Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

Advanced timing of its review does not relieve Public Service Commission from its duty of assessing the reasonableness of expenses and explaining the basis for a conclusion of reasonableness. D.C. Code 1981, §§ 43-612, 43-612(a). Potomac Electric Power Co. v. Public Service Com., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).

Validity.

Statutory provision requiring utility to bear expenses of investigation or revaluation proceedings by Public Utilities Commission as special franchise tax, and permitting utility to charge such expenses and interest to operating expenses, held not unconstitutional as making unjust discrimination. D.C. Code 1929, T. 26, § 65; U.S. Const.Amend. 14. Washington Ry. & Elec. Co. v. District of Columbia, 77 F.2d 366, 1935 U.S. App. LEXIS 4602 (1935).

§ 34-913. Separate hearings on complaints; complaints not to be dismissed because of absence of direct damage.

The Commission may, in its discretion, when complaint is made of more than one rate or charge of any public utility, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as it may prescribe. No complaint shall of necessity at any time be dismissed because of the absence of direct damage to the complainant.

(Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 43; May 9, 2000, D.C. Law 13-107, § 201(h), 47 DCR 1091.)

Prior Codifications. — 1981 Ed., § 43-614. 1973 Ed., § 43-413.

Effect of amendments. — D.C. Law 13-107 substituted "rate or charge of any public utility" for "rate or charge".

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-908.

§ 34-914. Summary investigation.

Whenever the Commission shall believe that any rate or charge of any public utility may be unreasonable or unjustly discriminatory, or that any reasonable service is not supplied by a public utility, or that an investigation of any matter relating to any public utility should for any reason be made, it may, on its own motion, summarily investigate the same with or without notice.

(Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 44; May 9, 2000, D.C. Law 13-107, § 201(i), 47 DCR 1091.)

Prior Codifications. — 1981 Ed., § 43-615. 1973 Ed., § 43-414.

Effect of amendments. — D.C. Law 13-107 substituted "rate or charge of any public utility" for "rate or charge", and substituted "supplied by a public utility" for "supplied".

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-908.

CASE NOTES

In general.

Public Service Commission had authority to direct public gas utility to keep particular customer service center open so as to make it easier for customers to pay gas bills; statutes granted commission authority to investigate public utility services, including "time and conditions of payment," which were "in any respect unreasonable or unjustly discriminatory," and stated that the Commission may investigate if it believes "any reasonable service is not supplied by a public utility." Wash. Gas Light Co. v. D.C. PSC, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

§ 34-915. Hearings after summary investigation.

If after making such investigation the Commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters so investigated, it shall furnish such public utility interested a statement notifying the public utility of the matters under investigation. Ten days after such notice has been given the Commission may proceed to set a time and place for a hearing and an investigation as hereinbefore provided.

(Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 45.)

Prior Codifications. — 1981 Ed., § 43-616. 1973 Ed., § 43-415.

§ 34-916. Notice; hearing to be conducted as though complaint had been filed.

Notice of the time and place for such hearing shall be given to the public utility and to such other interested persons as the Commission shall deem necessary, as provided in § 34-910, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the Commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint.

(Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 46.)

Prior Codifications. — 1981 Ed., § 43-617. 1973 Ed., § 43-416.

§ 34-917. Utility may make complaint.

Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by the Commission or upon reasonable complaint as hereinbefore provided.

(Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 47.)

Prior Codifications. — 1981 Ed., § 43-618. 1973 Ed., § 43-417.

§ 34-918. Commissioners and agents may administer oaths, issue subpoenas; proceeding to punish for contempt.

Each of the commissioners and every agent provided for in § 34-906, for the

purposes mentioned in this subtitle, shall have power to administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony. In case of disobedience on the part of any person or persons to comply with any order of the Commission or any commissioner, or any subpoena, or on the refusal of any witness to testify to any matter regarding which he may be interrogated before the Commission or its agent authorized, it shall be the duty of the Superior Court of the District of Columbia, or a judge thereof, on application of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 48; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(39)(C).)

Prior Codifications. — 1981 Ed., § 43-619. 1973 Ed., § 43-418.

§ 34-919. Witness fees.

Each witness who shall appear before the Commission or its agent by its order shall receive for his attendance the fees and mileage provided for witnesses in the United States District Court for the District of Columbia on March 4, 1913, which shall be audited and paid in the same manner as fees in criminal cases within the District of Columbia are audited and paid, upon the presentation of proper vouchers, sworn to by such witnesses and approved by the chairman of the Commission. No witnesses subpoenaed at the instance of parties other than the Commission shall be entitled to compensation for attendance or travel unless the Commission shall certify that his testimony was material to the matter investigated, and that his attendance as a witness was reasonably necessary.

(Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 49; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

Prior Codifications. — 1981 Ed., § 43-620. 1973 Ed., § 43-419.

§ 34-920. Testimony may be taken by deposition.

The Commission or any party may, in any investigation, cause the depositions of witnesses residing within or without the District of Columbia to be taken in the manner prescribed by law for like depositions in civil actions in the Superior Court of the District of Columbia.

(Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 50; July 29, 1970, 84 Stat. 583, Pub. L. 91-358, title I, § 163(i)(1).)

Prior Codifications. — 1981 Ed., § 43-621. 1973 Ed., § 43-420.

§ 34-921. Record of proceedings to be kept; testimony to be taken stenographically.

A full and complete record shall be kept of all proceedings had before the Commission or its agents on any formal investigation had, and all testimony shall be taken down by a stenographer appointed by the Commission.

(Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 51.)

Prior Codifications. — 1981 Ed., § 43-622. 1973 Ed., § 43-421.

§ 34-922. Certified copy of transcript to be received in evidence; copy to be furnished without cost.

A transcribed copy of the evidence and proceedings, or any specific part thereof, in any investigation taken by a stenographer appointed by the Commission, being certified by such stenographer to be a true and correct transcript of all the testimony in the investigation or of a particular witness, or of other specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had in such investigation so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the fact so certified. A copy of such transcript shall be furnished on demand, free of cost, to any party to such investigation.

(Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 53.)

Cross references. — Failure to obey Commission, penalties, see §§ 34-706, 34-731 and 34-732.

General provisions, construction and severability of law, see § 34-403.

Separability clauses, see §§ 34-405 and 34-406.

Prior Codifications. — 1981 Ed., § 43-623. 1973 Ed., § 43-422.

CHAPTER 10. SALE AND MERGER OF UTILITIES.

Sec.
34-1001. Assignment of franchise; acquisition of stocks and bonds of competing utilities.
Sec.
34-1002. [Repealed].

§ 34-1001. Assignment of franchise; acquisition of stocks and bonds of competing utilities.

No franchise nor any right to or under any franchise to own or operate any public utility as defined in this subtitle or to use the tracks of any street railroad shall be assigned, transferred, or leased, nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer, lease, contract, or agreement shall have been approved by the Commission in writing. The permission and approval of the Commission to the assignment, transfer, or lease of a franchise under this section shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture. It shall be unlawful for any street railroad corporation, gas company, electric company, telephone corporation, telegraph corporation, or other public utility corporation, directly or indirectly, to acquire the stock or bonds of any other corporation incorporated for or engaged in the same or similar business as it is, unless authorized in writing to do so by the Commission, and every contract, transfer, agreement for transfer or assignment of any such stock or bonds without such written authority shall be void and of no effect.

(Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 54; May 9, 2000, D.C. Law 13-107, § 201(j), 47 DCR 1091; Mar. 16, 2005, D.C. Law 15-227, § 17(f), 51 DCR 10549.)

Cross references. — Utility issuance of securities, reorganization or consolidation by stock issuance, see § 34-504.

Prior Codifications. — 1981 Ed., § 43-801. 1973 Ed., § 43-501.

Effect of amendments. — D.C. Law 13-107 substituted for "electric corporation" the phrase "electric company".

D.C. Law 15-227 substituted "gas company" for "gas corporation".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(e) of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Temporary Act of 2001 (D.C. Law 14-13, July 10, 2001, law notification 48 DCR 6589).

Legislative history of Law 13-107. — Law 13-107, the "Retail Electric Competition and Consumer Protection Act of 1999," was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-208.

CASE NOTES

In general.

Corporation, without express authority to do so, may not acquire stock of another corporation. Washington Gas Light Co. v. Dann, 70 F.2d 746, 1934 U.S. App. LEXIS 4292 (1934).

Gas company, having engaged engineer at agreed consideration to make survey of another utility corporation and negotiate purchase of its stock and bonds, held not entitled to defeat liability for agreed compensation on ground purchase of stock and bonds was ultra vires. D.C. Code 1929, T. 26, § 77. Washington Gas Light Co. v. Dann, 70 F.2d 746, 1934 U.S. App. LEXIS 4292 (1934).

§ 34-1002. Antimerger law. [Repealed].

Repealed.

(Mar. 4, 1913, 37 Stat. 1006, ch. 150, § 11; Mar. 4, 1925, 43 Stat. 1265, ch. 527, §§ 2, 3; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 588, Pub. L. 91-358, title I, § 168(a)(5); Aug. 5, 1997, 111 Stat. 781, Pub. L. 105-33, § 11703.)

Cross references. — Failure to obey Commission, penalties, see §§ 34-706, 34-731 and 34-732.

General provisions, construction and severability of law, see § 34-403.

Public Service Commission, creation, prior acts, see § 34-405.

Rates and charges, Commission's power to regulate, see § 34-709.

Rates and rate discrimination, see §§ 34-1129 and 34-702 et seq.

Prior Codifications. — 1981 Ed., § 43-802. 1973 Ed., § 43-502.

Editor's notes. — Pub. L. 105-33, title XI, § 11703, Aug. 5, 1997, 111 Stat. 781, provided for the repeal of this section. Section 11721 of Pub. L. 105-33 provided:

Sec. 11721. Effective Date. Except as otherwise provided in this title, provisions of this title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended by this title."

Prior to repeal, this section read: "(a) It shall be unlawful for any foreign public utility corporation, or for any foreign or local holding corporation, or for any local street railroad corporation, gas corporation, electric corporation, telephone corporation, telegraph corporation, or any other local public utility corporation, directly or indirectly, to own, control, or hold or vote stock or bonds of any public utility corporation organized under any general incorporation law or special Act of the United States or authorized under any law of the United States to do business in the District of Columbia, except as heretofore or hereafter expressly authorized by Congress; and it shall be unlawful for any public utility corporation organized or authorized as aforesaid to sell or transfer any portion of its stock or bonds to any other public utility corporation or holding corporation whatsoever, unless heretofore or hereafter expressly authorized by Congress so to do; and every contract, transfer, agreement to transfer, or assignment by any said public utility corporation organized or authorized as aforesaid of any portion of its stock or bonds without such authority shall be utterly void and of no effect. The Superior Court of the District of Columbia, on application of the District of Columbia by its Mayor or attorney, or on application of the United States by its proper officer, or on application of any shareholder interested in any such corporations, shall have jurisdiction in equity to dissolve any public utility corporation organized under any general incorporation law or special act of the United States, or authorized under any law of the United States to do business in the District of Columbia, for violation of any of the provisions of this section or of their charters; and further, to require any foreign public utility corporation, or foreign or local holding corporation which owns, holds, or controls, or which shall hereafter own, hold, or control any such stock or bonds contrary to any of the provisions of this section, to sell or dispose of the same and to refrain from voting such stock or bonds: Provided, that in case the allegations in any bill filed in said court relate to the ownership of stock or bonds of a local corporation by any foreign corporation, then it must be shown to the satisfaction of the court that such ownership includes at least 20 per centum of the capital stock of the local corporation.

"(b) The inhibitions and restrictions contained in this section are hereby removed, so far and only so far, as they affect the acquisition by any corporation of the stocks or bonds of any of the corporations referred to in § 43-803 1981 Ed. : Provided, Congress reserves the right to alter, amend, or repeal this paragraph of this section.

"(c) The word 'foreign' when used in this section shall be construed to mean foreign to the District of Columbia, and the word 'local' when used in this section shall be construed to mean local in the District of Columbia.

"(d) Each provision of this section and every part of each provision is hereby declared to be an independent provision, and the holding of any provision or provisions, or part or parts thereof, to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other provision or part thereof."

CHAPTER 11. SERVICE, VALUATION, ACCOUNTS.

Sec.
34-1101. Utility service and charges to be just and reasonable; certification required.
34-1102. Use of equipment of other companies; application to Commission to require such use in event of disagreement.
34-1103. Commission to compel compliance with laws and ordinances.
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§ 34-1101. Utility service and charges to be just and reasonable; certification required.

(a) Every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any public utility for a facility or service furnished, rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust, unreasonable, or discriminatory charge for the facility or service is prohibited and unlawful. Every public utility is required to obey the lawful orders of the Commission created by this subtitle.

(b) No public utility shall furnish a service or facility, directly or indirectly, without first proceeding and proving to the satisfaction of the Public Service Commission ("Commission") that the present and future public convenience

and necessity requires that the service be provided or the facility be offered. Upon application of a public utility for a certificate of present and future public convenience and necessity pursuant to this subsection, the Commission, upon a hearing and notice to the public, shall issue an order granting or denying the application, in whole or in part, stating the reasons for the action. The Commission may prescribe terms and conditions upon a grant of an application for a certificate of present and future public convenience and necessity as the Commission, in its discretion, decides are necessary to further the present and future public convenience and necessity. The Commission is authorized to promulgate any rules necessary to implement this subsection.

(c) Every public utility that was regulated by the Commission and that furnished a service or facility within the District of Columbia as of June 27, 1989 is deemed to have been granted a certificate of public convenience and necessity.

(d) The Commission is authorized to promulgate any rules necessary to implement this section.

(Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 2; Sept. 20, 1989, D.C. Law 8-29, § 2, 36 DCR 4742; Oct. 19, 1989, D.C. Law 8-47, § 2, 36 DCR 5786.)

Prior Codifications. — 1981 Ed., § 43-501. 1973 Ed., § 43-301.

Legislative history of Law 8-29. — Law 8-29 was introduced in Council and assigned Bill No. 8-297. The Bill was adopted on first and second readings on May 30, 1989 and June 13, 1989, respectively. Signed by the Mayor on June 27, 1989, it was assigned Act No. 8-52 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-47. — Law 8-47 was introduced in Council and assigned Bill No. 8-321, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-80 and transmitted to both Houses of Congress for its review.

Editor's notes. — Deregulation of streetlighting service: Section 130 of H.R. 3067, amended by H.R. 99-419, incorporated in Pub. L. 99-190 by § 101(c), the D.C. Appropriation Act, 1986, provided that the Public Service Commission is authorized to order and to approve the deregulation of streetlighting service to the District of Columbia as provided in its opinion and order in Formal Case No. 813, dated July 12, 1984 (Order No. 8056), § 43-402 § 1-204.93, 2001 Ed., this section, and § 43-1207 § 34-1407, 2001 Ed., and provided that the provisions of this opinion and order regarding deregulation of streetlighting service are hereby ratified and declared to be in effect as of July 12, 1984 and shall continue to be in effect until revoked or rescinded.

CASE NOTES

ANALYSIS

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—Reasonableness, electricity charges.
—Recouping losses, electricity charges.
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Charges, generally.

Under the Public Service Commission Law, and the Fifth Amendment to the United States Constitution, the District of Columbia Public Service Commission is required to establish utility rates which are reasonable, just and nondiscriminatory. D.C. Code 1981, § 43-301 et seq.; U.S. Const.Amend. 5. Potomac Elec. Power Co. v. Public Service Com'n of Dist. of Columbia, 457 A.2d 776, 1983 D.C. App. LEXIS 325 (1983).

A utility may not charge a higher rate in the

future in order to recoup past losses. D.C. Code §§ 43-301, 43-401. Chesapeake & Potomac Tel. Co. v. Public Service Com., 330 A.2d 236, 1974 D.C. App. LEXIS 316 (1974).

Discrimination.

Charge for any service furnished by public utility must be nondiscriminatory. D.C. Code § 43-301. Atlantic Tel. Co. v. Public Service Com., 390 A.2d 439, 1978 D.C. App. LEXIS 489 (1978).

So long as classifications are reasonable, difference in rates for services furnished by public utility may exist between different classes of customers; such differences may be based on nature, time, and pattern of use so as to achieve reasonable efficiency and economic operation. D.C. Code § 43-301. Atlantic Tel. Co. v. Public Service Com., 390 A.2d 439, 1978 D.C. App. LEXIS 489 (1978).

In determining whether there has been discrimination in charges for services furnished by public utility, Public Service Commission must consider whether customers have paid different amounts for same service under same circumstances. D.C. Code § 43-301. Atlantic Tel. Co. v. Public Service Com., 390 A.2d 439, 1978 D.C. App. LEXIS 489 (1978).

Electricity charges.

— Discrimination, electricity charges.

Application of marginal cost based, time of day rates to large commercial customers of electric utility only was not unjustly discriminatory on ground that it would result in sending of improper price signals to large number of customers. D.C. Code 1973, § 43-301; Public Utility Regulatory Policies Act of 1978, §§ 101, 111, 111(d)(1-4), 16 U.S.C. §§ 2611, 2621, 2621(d)(1-4). Metropolitan Washington Bd. of Trade v. Public Service Com., 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

While it may have been true that an immediate, across the board implementation of marginal cost based, time of day rates for electric utility would further all of the goals of the Public Service Commission in the most effective manner, it did not follow that a selective implementation of rates would preclude the Commission from achieving its goal or that there was no reasonable basis for distinguishing between large commercial customers and smaller commercial and residential customers. D.C. Code 1973, § 43-301; Public Utility Regulatory Policies Act of 1978, §§ 101, 111, 111(d)(1-4), 16 U.S.C. §§ 2611, 2621, 2621(d)(1-4). Metropolitan Washington Bd. of Trade v. Public Service Com., 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

The need to draw a line between large commercial customers and smaller commercial and residential customers did not convert an otherwise reasonable classification of marginal cost based, time of day rates for large commercial customers into a classification which was arbitrary. D.C. Code 1973, § 43-301; Public Utility Regulatory Policies Act of 1978, §§ 101, 111, 111(d)(1-4), 16 U.S.C. §§ 2611, 2621, 2621(d)(1-4). Metropolitan Washington Bd. of Trade v. Public Service Com., 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

— In general.

Substantial record evidence supported Public Service Commission's decision to change electric utility's interclass rate design, relating to differences in rates charged to different classes of consumers of the utility, to equalize rate of return paid under rapid transit schedule to that paid under general services schedule governing rate for other large commercial customers, even without quantification of amount of utility's marginal costs for which transit authority was responsible and relating of that factor to the rate increase. D.C. Code 1981, § 43-501. People's Counsel of District of Columbia v. Public Service Com., 462 A.2d 1105, 1983 D.C. App. LEXIS 424 (1983).

Marginal cost based, time of day rates, adopted by Public Service Commission for large demand customers of electric utility in an attempt to allocate costs to customers who consumed electricity during peak periods, when cost of providing electricity was high, by charging higher prices per unit of electricity during the peak period was supported by a sufficient cost benefit analysis in that rates would promote rate equity and there was potential that rates would promote conservation of energy and maximization of efficiency in facility and resource used by utility. D.C. Code 1973, § 43-301; Public Utility Regulatory Policies Act of 1978, §§ 101, 111, 111(d)(1-4), 16 U.S.C. §§ 2611, 2621, 2621(d)(1-4). Metropolitan Washington Bd. of Trade v. Public Service Com., 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

If an electric rate has been properly promulgated by Public Service Commission and is reasonable, just and nondiscriminatory, electric utility must charge that rate and, correspondingly, consumer must pay that amount unless there is a valid defense to such a charge. D.C. Code §§ 43-201a, 43-301, 43-401. District of Columbia v. Potomac Electric Power Co., 402 A.2d 430, 1979 D.C. App. LEXIS 377 (1979).

In exercising its rate-making responsibility, Public Service Commission is not bound to use any particular methodology, nor is it bound to adopt any particular alternative proposed. D.C. Code § 43-706. District of Columbia v. Potomac Electric Power Co., 402 A.2d 430, 1979 D.C. App. LEXIS 377 (1979).

Although electric utility is expected to base its application for rate increase on specified test year, where dispute arises later as to appropri-

ate period to be employed as the test year, it is up to Public Service Commission in reasonable exercise of its discretion to determine to what extent new data can and should be used in the case. District of Columbia v. Potomac Electric Power Co., 402 A.2d 430, 1979 D.C. App. LEXIS 377 (1979).

Validity of test period approach in fixing electricity rates rests on assumption that the relationship among revenues, expenses, and rate base established in the test year will continue into the period when the prescribed rates will be in effect; accordingly, a valid test period is one based on the utility's most recent actual experience, with adjustments for all known changes affecting costs and revenues for the immediate future; rate maker may not rely on out-of-date information when more recent actual experience is available. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Realistic electricity rate making in today's economic climate must take into account the lengthening delays occasioned by the regulatory processes, while recognizing the need for preserving an appropriate balance between investor and consumer interests; regulatory lag may not be arbitrarily cited in an effort to justify failure to strike the needed balance by utilizing the utility's most recent historical data of record. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Fact that electric utility did not suggest substitution of calendar year ending June 30, 1975, for calendar year ending December 30, 1974, as test period in fixing electric utility rates did not justify Public Service Commission's failure to consider data for 12-month period ending June 30, 1975, which data revealed a rapidly worsening financial situation, with utility having unsuccessfully sought two interim rate increases, subject to refund. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

By disregarding evidence as to operating results for first six months of 1975 and rationalizing that 1974 decline in rate of return and earnings was attributed to factors allegedly unrelated to attrition, i.e., energy crisis and decline in sales to electricity interchange pool, the Public Service Commission arbitrarily utilized the test period, i.e., calendar year 1974, and a consequent rate base devoid of predictive value. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Although surcharge could be imposed to recover revenues lost by electric utility while inadequate rate order was in effect, Public Service Commission was to determine whether surcharge was to be offset by any unusually high revenues experienced because of moderately warmer summer and uniquely colder winter while the challenge rate was in effect. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

While regulation does not guarantee that an electric utility will achieve its projected revenues, it must provide the utility with a reasonable opportunity to earn a rate of return sufficient to maintain its financial integrity, to attract necessary capital at reasonable cost and to compensate investors fairly for the risks they have assumed, while protecting relevant public interests; rate making involves a delicate balancing of investor and consumer interests. D.C. Code §§ 43-301, 43-401, 43-411; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

For electric utility rate-making purposes, the rate base multiplied by the rate of return, with necessary adjustments for income tax liability, determines the revenue requirements; "rate base" being defined as the value of the utility's property used and useful in the public service minus accrued depreciation. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

— Reasonableness, electricity charges.

In order to define the reasonableness requirement of the statute for the setting of electric rates by the utility, the Public Service Commission appropriately looked to the Public Utility Regulatory Policies Act of 1978 requiring that rates charged by any electric utility to each class of consumers reflect as well as possible the cost of providing a service to the class and that time of day rates be used unless shown to be cost ineffective for the class under consideration. D.C. Code 1973, § 43-301; Public Utility Regulatory Policies Act of 1978, §§ 101, 111, 111(d)(1-4), 16 U.S.C. §§ 2611, 2621, 2621(d)(1-4). Metropolitan Washington Bd. of Trade v. Public Service Com., 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

Request by electric utility that Public Service Commission used more recent data submitted in last-minute filing and electric utility rate case is not necessarily fair or reasonable request; it is to be resolved in reasonable exercise of the Commission's discretion. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

In proceedings on application by electric utility for rate increase, Public Service Commission did not fail to account for attrition incurred by the utility in establishing rate base so as to render decision of the Commission arbitrary, capricious and unreasonable. D.C. Code § 43-706. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

To be "just and reasonable," electricity rates must be set at a level that permits the utility to earn a fair rate of return on its investment. D.C. Code §§ 43-301, 43-401, 43-411; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

No single formula or combination of formulas limits a regulatory commission's power to set "just and reasonable" electricity rates; however, a commission is obliged to make pragmatic adjustments where appropriate circumstances exist and courts may intervene only on a "clear showing" of a due process violation and if the rate order, viewed in its entirety, produces no arbitrary result, judicial inquiry is to be terminated. D.C. Code §§ 43-301, 43-401, 43-411, 43-705; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

In determining whether an electricity rate is "just and reasonable," it is the result reached and not the method employed that is controlling. D.C. Code §§ 43-301, 43-401, 43-411, 43-705; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Electricity rate order was unjust and unreasonable where it deprived utility of opportunity to earn a fair rate of return by improperly disregarding the latest relevant historical data of record pertaining to its operations, in that Public Service Commission refused to utilize most recent test period in the record, failed to account for continuing attrition and refused to recognize certain known changes which occurred after the original proposed test period. D.C. Code §§ 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

— Recouping losses, electricity charges.

Electric utility, after Public Service Commission (PSC) had issued a decision disapproving of inclusion in utility's rate base of expensed costs for its Supplemental Executive Retirement Plan and Executive Benefit Protection Plan (SERP), justifiably relied on limited scope of that decision when utility continued to carry on its books capitalized costs for SERP, and thus, the ban against retroactive ratemaking precluded recoupment, in a proceeding in which utility, more than a decade after the PSC's decision, sought an increase in its distribution service rates, of capitalized cost for SERP that utility had included in its rate base since the PSC's decision. Office of People's Counsel v. D.C. PSC, 989 A.2d 190, 2010 D.C. App. LEXIS 80 (2010).

General principle precluding a utility from charging higher rates in the future in order to recoup past losses did not preclude imposition of a surcharge to recover revenues lost by electric utility while rate order, which was found to be arbitrary and unreasonable, was in effect; losses occurred after fair rate of return had been determined and lost revenues were shown, by abundant evidence, to have been result of arbitrary and unreasonable rulings of Public Service Commission; imposition of surcharge to recoup past losses would not constitute retroactive rate making. D.C. Code §§ 1-1510(1), 43-301, 43-401, 43-411. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Equal protection.

Constitutional basis for requiring electric utility rates to meet the test of reasonableness derives from the Fifth and Fourteenth Amendments. D.C. Code§§ 43-301, 43-401, 43-411; U.S. Const. Amends. 5, 14. Potomac Electric Power Co. v. Public Service Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Gas charges.

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. D.C. Code 1940, §§ 43-301, 43-401, 43-705, 43-706. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

Whether gas company's expenditure for adapting customers' appliances to natural gas to permit changeover from manufactured to natural gas should be considered a prudent investment includible in the rate base is a matter for the District of Columbia Public Utilities Commission. D.C. Code 1940, § 43-301. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

The composition of gas rate base is within province of District of Columbia Public Utilities Commission, and commission can adopt any method of valuation so long as end result of rate order is not unjust and unreasonable and can even use a method of calculating rates other

than the traditional one which depends on the finding of a rate base. D.C. Code 1940, §§ 43-301, 43-305, 43-306. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

Under reproduction cost theory, it is unreasonable to burden public with gas rates based on cost of obsolete and abandoned property which no one will conceivably think of reproducing. D.C. Code 1940, § 43-301. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

The prudent investment theory of gas rate base valuation contemplates that rates will enable investor to maintain his original prudent investment intact until it is recovered through annual charges to depreciation expense reflected in a depreciation reserve, and if a unit of property resulting from prudent investment becomes obsolete before it has been recovered in full by the investor it is not necessarily erroneous as a matter of law for the commission to include such property in the rate base until such recovery has occurred and such a course may be necessary to assure efficiency and progress in the art and continued attraction of capital to the enterprise. D.C. Code 1940, § 43-301. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

The inclusion of items in gas rate base must meet the test of justness and reasonableness to the consumer as well as to the investor. D.C. Code 1940, § 43-301. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

In gas rate proceeding, compensation to investors for risk of obsolescence may be made either through inclusion of obsolescence as one of the elements used in calculating depreciation expense or as risk considered in fixing the permissible rate of return, and if in the past the risk of obsolescence was so provided for, abandoned property should not be included in the rate base. D.C. Code 1940, § 43-301. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

Gas company's expenditure for adapting customers' appliances to natural gas to permit changeover from manufactured to natural gas is a proper item of expense currently deductible from operating revenues for rate purposes and can be treated as a deferred expense allocable over period of future years. D.C. Code 1940, § 43-301. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

Where conversion to natural gas makes retirement of gas manufacturing plant imminent, District of Columbia Public Utilities Commission, in order to depreciate plant at accelerated pace for gas rate purposes, must determine whether investors have already been compensated for the risk that annual depreciation charges would prove inadequate at time of retirement because of obsolescence. D.C. Code 1940, § 43-301. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

The prudent investment theory of gas rate regulation requires determination by District of Columbia Public Utilities Commission of the rate base and of a rate of return on that rate base sufficient to produce adequate revenues above operating expenses, including depreciation, to pay interest on bonds, dividends on stock and maintain financial integrity of the enterprise, and it is essential to inquiry on fair rate of return that there be a study of capital costs of the business, such as service on debt and dividends on stock, in light of returns on other investments in other enterprises having similar risk factor. D.C. Code 1940, § 43-301. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

If District of Columbia Public Utilities Commission includes abandoned property in gas rate base, protection of consumer interest requires that such treatment of abandoned property be offset in the rate of return. D.C. Code 1940, § 43-301. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

Court would decline to consider issue of whether gas company would achieve double recovery if allowed to collect amount due on account from consumer by threat of refusal to reconnect service in violation of duty to furnish "just and reasonable" service, where neither hearing examiner nor Public Service Commission considered whether company's reliance on tariff while purportedly writing off "bad debts" in rate increases amounted to double recovery. D.C. Code 1981, § 43-501. Jackson v. Public Service Com., 590 A.2d 517, 1991 D.C. App. LEXIS 109 (1991).

Public Service Commission had no authority to disallow as reasonable operating expense wholesale purchase cost of natural gas approved by Federal Energy Regulatory Commission, including that portion of wholesale cost attributable to Gas Research Institute surcharges. D.C. Code 1981, § 43-501; Natural Gas Act, §§ 1-24, as amended, 15 U.S.C. §§ 717-717w; Public Utility Regulatory Policies Act of 1978, §§ 605-607, 15 U.S.C. §§ 717x-717z. Washington Gas Light Co. v. Public Service Com., 508 A.2d 930, 1986 D.C. App. LEXIS 324 (1986).

As maximum overall return of 9.25% on gas company's rate base was within zone of reasonableness, there was no error with respect to Public Service Commission's determination that company be allowed 13% return on common equity and Commission's reduction of test-

year cost of debt by means of amortizing gains which had been realized in past years upon company's redemption of certain long-term debentures. D.C. Code 1981, § 43-501. Washington Gas Light Co. v. Public Service Com., 450 A.2d 1187, 1982 D.C. App. LEXIS 433 (1982).

In general.

Public Service Commission, not the Court of Appeals, has responsibility for setting utility rates and establishing rate designs; in doing so, however, it must arrive at a fair balance between competing consumer and investor interests. D.C. Code 1981, §§ 43-501, 43-601, 43-611, 47-2501. Washington Metropolitan Area Transit Authority v. Public Service Com., 486 A.2d 682, 1984 D.C. App. LEXIS 583 (1984).

It is Public Utilities Commission, not court, which has responsibility for setting utility rates and establishing rate designs. D.C. Code 1981, §§ 43-501, 43-601, 43-611. People's Counsel of District of Columbia v. Public Service Com., 472 A.2d 860, 1984 D.C. App. LEXIS 316 (1984).

Public Service Commission, not the Court of Appeals, has the sole responsibility for balancing consumer and investor interests in designing rate structures and approving specific charges. D.C. Code 1981, §§ 43-501, 43-601, 43-611. Potomac Elec. Power Co. v. Public Service Com'n of Dist. of Columbia, 457 A.2d 776, 1983 D.C. App. LEXIS 325 (1983).

Judicial review.

The statutory authority of the Court of Appeals to review questions of law implies necessity for making findings, in proceeding to determine rates for power company, rationally manifesting method used in determining such rates. D.C. Code 1951, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

The responsibility for setting utility rates lies with Public Service Commission, not with reviewing court. Chesapeake & Potomac Tel. Co. v. Public Service Com., 498 A.2d 1167, 1985 D.C. App. LEXIS 502 (1985).

Any rate order of Public Service Commission is presumptively valid and will be reversed only upon a convincing showing that Commission failed to comply with statutory criteria. Chesapeake & Potomac Tel. Co. v. Public Service Com., 498 A.2d 1167, 1985 D.C. App. LEXIS 502 (1985).

So long as rate order of Public Service Commission is within a zone of reasonableness, it is insulated from judicial review, provided that Commission has carried its burden of showing fully and clearly why it has taken the particular rate-making action. Chesapeake & Potomac Tel. Co. v. Public Service Com., 498 A.2d 1167, 1985 D.C. App. LEXIS 502 (1985).

Rate-making decisions of Public Utilities Commission are insulated from judicial review if they fall within zone of reasonableness. D.C. Code 1981,§ 43-501. People's Counsel of District of Columbia v. Public Service Com., 472 A.2d 860, 1984 D.C. App. LEXIS 316 (1984).

Statutory authority of the Public Service Commission to establish rate design and to set specific utility rates is deliberately broad and gives the Commission authority to formulate its own standards and to exercise its ratemaking function free from judicial interference, provided the rates fall within a zone of reasonableness which assures that the Commission is safeguarding the public interest, that is, the interests of both investors and consumers. D.C. Code 1973, §§ 43-301, 43-401, 43-411. Metropolitan Washington Bd. of Trade v. Public Service Com., 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

Sole rate-making authority in electric utility rate cases is vested in Public Service Commission; Court of Appeals is not to substitute its judgment for that of the Commission; even though the Court might arrive at somewhat different decision than did the Commission, if there is substantial evidence to support Commission's findings and conclusions, the Court must affirm. D.C. Code § 43-706. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

As long as there is substantial evidence to support reasoned conclusion of Public Service Commission in electric utility rate case the Court of Appeals must affirm. D.C. Code § 43-706. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

Appeal of 1975 electric utility rate order was not moot despite issuance of 1976 order. Potomac Electric Power Co. v. Public Service Com., 402 A.2d 14, 1979 D.C. App. LEXIS 358 (1979), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3481 (1979).

Rate order, as "product of expert judgment," is presumptively valid and should be upheld unless petitioner makes convincing showing that it fails to meet statutory criteria. D.C. Code §§ 11-722, 43-301, 43-411, 43-705, 43-706. Washington Public Interest Organization v. Public Service Com., 393 A.2d 71, 1978 D.C. App. LEXIS 335 (1978), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3483 (1979).

Reasonableness of charges.

Public Service Commission exceeded its authority in requiring gas company to prove ex-

tent to which Gas Research Institute surcharge had benefited local ratepayers in that issue of reasonableness of such charges was preempted by Federal Energy Regulatory Commission determination of reasonableness. Natural Gas Act, §§ 1-24, as amended, 15 U.S.C. §§ 717-717w; Public Utility Regulatory Policies Act of 1978, §§ 605-607, 15 U.S.C. §§ 717x-717z; D.C. Code 1981, § 43-501. Washington Gas Light Co. v. Public Service Com., 508 A.2d 930, 1986 D.C. App. LEXIS 324 (1986).

Public Service Commission is not required to adopt as "just and reasonable" any particular rate level; rather, the constitutional and statutory mandate allows the Commission broad discretion to set rates, without judicial interference, provided the rates are within a "zone of reasonableness." D.C. Code 1981, § 43-301 et seq.; U.S. Const.Amend. 5. Potomac Elec. Power Co. v. Public Service Com'n of Dist. of Columbia, 457 A.2d 776, 1983 D.C. App. LEXIS 325 (1983).

From the investor standpoint, courts have defined the lower boundary of the zone of reasonableness for a rate set by the Public Service Commission as one which is not confiscatory in the constitutional sense, and from the consumer standpoint, the upper boundary cannot be so high that the rate would be classified as exorbitant. D.C. Code 1973, §§ 43-301, 43-401, 43-411. Metropolitan Washington Bd. of Trade v. Public Service Com., 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

Remand.

In proceeding by power company, which served District of Columbia and other jurisdictions, before Public Utility Commission of District of Columbia for rate increase, case would be remanded to commission to make further findings concerning return necessary to service outstanding funded debt and preferred stock and to attract investors in common stock and concerning return on such debt and stock of other similar public utilities and changes in local and economic conditions and risk factor since last determination of rate of return. D.C. Code, §§ 43-301, 43-401, 43-411, 43-911. Capital Transit Co. v. Public Utilities Commission of District of Columbia, 213 F.2d 176, 1953 U.S. App. LEXIS 3992 (C.A.D.C. 1953).

Services within section.

Not all services offered by a public utility are regulable under statute providing that every public utility doing business within the District of Columbia is required to furnish service and facilities in all respects just and reasonable. D.C. Code 1961, §§ 43-301, 43-303. Classified Directory Subscribers Asso. v. Public Service Com., 383 F.2d 510, 1967 U.S. App. LEXIS 5125 (C.A.D.C. 1967).

"Yellow Pages" advertising was not a public utility "service" or "facility" within statute providing that every public utility doing business within the District of Columbia is required to furnish service and facilities in all respects just and reasonable, and hence the public service commission lacked jurisdiction to regulate rates and practices of telephone company with respect to its yellow pages classified telephone directory. D.C. Code 1961, §§ 43-301, 43-303. Classified Directory Subscribers Asso. v. Public Service Com., 383 F.2d 510, 1967 U.S. App. LEXIS 5125 (C.A.D.C. 1967).

Under the Act of Congress applicable to the District of Columbia requiring public utilities to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable, the term "service" is used in its broadest and most inclusive sense. D.C. Code 1940, §§ 43-104, 43-301. Pollak v. Public Utilities Commission of District of Columbia, 191 F.2d 450, 1951 U.S. App. LEXIS 3457 (C.A.D.C. 1951).

Telecommunications charges.

Public Service Commission's approval of 62% increase by telephone company in recurring rate for certain type of obsolete telephone switchboards was "fair, just and reasonable" within meaning of relevant statutes, despite intervening association's contention that new rate would produce for telephone company a contribution over cost between 183.7% and 230.9%, since telephone company pointed out that such calculations failed to include all of items that were provided in connection with switchboard, and since Commission explicitly stated that increase was in conformity with that imposed on other users. D.C. Code 1982, §§ 43-501, 43-601(d). D.C. Tel. Answering Service Committee v. Public Service Com., 476 A.2d 1113, 1984 D.C. App. LEXIS 388 (1984).

Two-tier rate structure employed by telephone company in providing private branch exchange service was not discriminatory. D.C. Code § 43-301. Atlantic Tel. Co. v. Public Service Com., 390 A.2d 439, 1978 D.C. App. LEXIS 489 (1978).

§ 34-1102. Use of equipment of other companies; application to Commission to require such use in event of disagreement.

Every utility doing business in the District of Columbia having tracks,

conduits, subways, poles, wires, switchboards, exchanges, works, or other equipment shall, for a reasonable compensation, permit the use of the same by any other public utility whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owners or other users of such equipment; nor in any substantial detriment to the service to be rendered by such owners or other users. In case of failure to agree upon such use, or the conditions or compensation for such use, any public utility or any person, firm, copartnership, association, or corporation interested may apply to the Commission, and if after investigation the Commission shall ascertain that public convenience and necessity require such use and that it would not result in irreparable injury to the owners or other user of such equipment nor in any substantial detriment to the service to be rendered by such owners or other users of such equipment, it shall by order direct that such use be permitted and prescribe the conditions and compensation for such joint use. Such use so ordered shall be permitted and such conditions and compensation so prescribed shall be the lawful conditions and compensation to be observed, followed, and paid, subject to recourse to the courts upon the complaint of any interested party, as hereinafter provided, which provisions, so far as applicable, shall apply to any action arising on such complaint so made. Any such order of the Commission may be from time to time revised by the Commission upon application of any interested party or upon its own motion after hearing and notice by order in writing.

(Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 3.)

Cross references. — Bridges, shared use, see §§ 9-305, 9-307, 9-308 and 9-311.

Certain railroad facilities, shared use, see §§ 9-1201.13, 9-1203.01 et seq. and 35-208 et seq.

Investigations of public utilities, assessing expenses, see § 34-912.

Joint use of conduit by Potomac electric power company, mayor authorized to permit, see § 34-1408.

Rules and regulations, power of Commission to adopt, see § 34-902.

Prior Codifications. — 1981 Ed., § 43-502. 1973 Ed., § 43-302.

§ 34-1103. Commission to compel compliance with laws and ordinances.

The Commission shall have power, after hearing and notice by order in writing, to require and compel every public utility to comply with the provisions of this subtitle, and with other laws of the United States applicable, and any municipal ordinance or regulation relating to said public utility, and to conform to the duties upon it thereby imposed or by the provisions of its own charter, if any charter has or shall be granted it; provided, that nothing herein contained shall be held to relieve any public utility, its officers, agents, or servants, from any punishment, fine, forfeiture, or penalty for violation of any such law, ordinance, regulation, or duty imposed by its charter, nor to limit, take away, or restrict the jurisdiction of any court or other authority which on March 4, 1913, had or which may thereafter have power to impose any such punishment, fine, forfeiture, or penalty.

(Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 4.)

Cross references. — Certified copies of orders, see § 34-611.

Penal provisions, generally, see § 34-701 et seq.

Prior Codifications. — 1981 Ed., § 43-503. 1973 Ed., § 43-303.

CASE NOTES

ANALYSIS

Jurisdiction.
Remand.

Jurisdiction.

Where transit company for the District of Columbia installed radio loudspeakers in its vehicles for radio broadcasts of music and commercial announcements, and on protest of passengers the Public Utilities Commission ordered an investigation and dismissed the investigation by a final order which was appealed to the district court which dismissed the petitions of the passengers on the grounds that no legal rights had been invaded, jurisdiction of the Commission and the district court was present. D.C. Code 1940, §§ 43-104, 43-301, 43-303, 43-320, 43-1002. Pollak v. Public Utilities Commission of District of Columbia, 191 F.2d 450, 1951 U.S. App. LEXIS 3457 (C.A.D.C. 1951).

Remand.

Remand was required for Public Service Commission (PSC) to determine, in light of its own precedents, whether it had authority to entertain complaint challenging utility's alleged noncompliance with minority subcontractor provisions of Small Business Act. Small Business Act, § 2[8](c), (c)(4)(B), as amended, 15 U.S.C. § 637(c), (c)(4)(B); D.C. Code 1981, § 43-503. Jordan v. Public Serv. Comm'n, 622 A.2d 1106, 1993 D.C. App. LEXIS 60 (1993).

§ 34-1104. Proposed changes in law to be submitted to Commission; hearings; recommendations to Congress. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-153, § 3(a), 31 DCR 6440.)

Prior Codifications. — 1981 Ed., § 43-504.

Legislative history of Law 5-153. — Law 5-153 was introduced in Council and assigned Bill No. 5-225, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on October 30, 1984, and November 7, 1984, respectively. Disapproved by the Mayor on November 30, 1984, the Bill was reenacted by the Mayor on November 30, 1984, the Bill was reenacted by the Council on December 4, 1984, assigned Act No. 5-217 and transmitted to both Houses of Congress for review.

§ 34-1105. Commission to ascertain cost of construction, replacement value, outstanding stock; information to be printed in annual report.

The Commission shall ascertain, as soon and as nearly as practicable, the amount of money expended in the construction and equipment of every public utility, including the amount of money expended to procure any right-of-way; also the amount of money it would require to secure the right-of-way, reconstruct any roadbed, track, depots, cars, conduits, subways, poles, wires, switchboards, exchanges, offices, works, storage plants, power plants, machinery, and any other property or instrument not included in the foregoing enumeration used in or useful to the business of such public utility, and to replace all the physical properties belonging to the public utility. It shall ascertain the outstanding stock, bonds, debentures, and indebtedness, and the amount, respectively, thereof, the date when issued, to whom issued, to whom

sold, the price paid in cash, property, or labor therefor, what disposition was made of the proceeds, by whom the indebtedness is held, so far as ascertainable, the amount purporting to be due thereon, the floating indebtedness of the public utility, the credits due the public utility, other property on hand belonging to it, the judicial or other sales of said public utility, its property or franchises, and the amounts purporting to have been paid, and in what manner paid therefor, and the taxes paid thereon. The Commission shall also ascertain in detail the gross and net income of the public utility from all sources, the amounts paid for salaries to officers and the wages paid to its employees, and the maximum hours of continuous service required of each class. Whenever the information required by this section is obtained it shall be printed in the annual report of the Commission. In making such investigation the Commission may avail itself of any information in possession of any department of the government of the United States or of the Mayor of the District of Columbia.

(Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 6.)

Cross references. — Investigations of public utilities, assessing expenses, see § 34-912.

Rate change procedures, appeal and review, see § 34-901.

Rules and regulations, power of Commission to adopt, see § 34-902.

Valuation instruction, Commission's request from court of appeals, see § 34-604.

Prior Codifications. — 1981 Ed., § 43-505. 1973 Ed., § 43-305.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

In general.
Unit for rate-making purposes.

In general.

The valuation of sections of the code are not binding on District of Columbia Public Utilities Commission in gas rate proceedings. D.C. Code 1940, §§ 43-305, 43-306. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

The composition of gas rate base is within province of District of Columbia Public Utilities Commission, and commission can adopt any method of valuation so long as end result of rate order is not unjust and unreasonable and can even use a method of calculating rates other than the traditional one which depends on the finding of a rate base. D.C. Code 1940, §§ 43-301, 43-305, 43-306. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

Rate base valuation of street railway property held to improperly include item representing good will of one of companies previously consolidated. 37 Stat. 974; 28 Stat. 700. Public Utilities Commission of District of Columbia v. Capital Traction Co., 17 F.2d 673, 1927 U.S. App. LEXIS 2997 (1927).

If part of the business of electric power company is subject to state regulation and part is subject to federal regulation, state, in fixing rates, must segregate properties used in the intrastate business and establish intrastate rates on basis of the segregated properties as a rate base, and costs must be allocated as between intrastate and interstate business, but such segregation is not mandatory if business of company is subject to regulation by two or

more states, no part of it being subject to federal supervision. D.C. Code 1940, §§ 43-705, 43-706. Leeman v. Public Utilities Commission of District of Columbia, 104 F.Supp. 553, 1952 U.S. Dist. LEXIS 4351 (D.D.C1952).

Unit for rate-making purposes.

Normally, the unit for rate-making purposes for electricity is the entire interconnected operating property of the utility, without regard to geographical subdivisions, though conditions may be such as to require or permit segregation of a smaller unit. D.C. Code 1940, §§ 43-705, 43-706. Leeman v. Public Utilities Commission of District of Columbia, 104 F.Supp. 553, 1952 U.S. Dist. LEXIS 4351 (D.D.C1952).

Ordinarily, in determining electric power rate, question whether smaller unit of electric power should be used as a basis for rate making is a matter of discretion for the regulatory agency. D.C. Code 1940, §§ 43-705, 43-706. Leeman v. Public Utilities Commission of District of Columbia, 104 F.Supp. 553, 1952 U.S. Dist. LEXIS 4351 (D.D.C1952).

Where electric power company supplied from the same powerhouse electric current to customers in the District of Columbia and to customers in Maryland and Virginia, the Public Utilities Commission of the District of Columbia, in determining whether rates for electric power should be increased, properly treated the business of the company as a single enterprise and refused to segregate properties or allocate costs attributable to the part of the business done in the District of Columbia. D.C. Code 1940, §§ 43-705, 43-706. Leeman v. Public Utilities Commission of District of Columbia, 104 F.Supp. 553, 1952 U.S. Dist. LEXIS 4351 (D.D.C1952).

§ 34-1106. Property to be valued as of time of evaluation.

The Commission shall value the property of every public utility within the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation.

(Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 7.)

Cross references. — Investigations of public utilities, assessing expenses, see § 34-912.

Valuation instruction, Commission's request from court of appeals, see § 34-604.

Prior Codifications. — 1981 Ed., § 43-506. 1973 Ed., § 43-306.

CASE NOTES

In general.

The valuation of sections of the code are not binding on District of Columbia Public Utilities Commission in gas rate proceedings. D.C. Code 1940, §§ 43-305, 43-306. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

The composition of gas rate base is within province of District of Columbia Public Utilities Commission, and commission can adopt any method of valuation so long as end result of rate order is not unjust and unreasonable and can even use a method of calculating rates other than the traditional one which depends on the finding of a rate base. D.C. Code 1940, §§ 43-301, 43-305, 43-306. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

Where consent decree fixed rate base, established a sliding scale of rates, and provided that if rates yielded more than a certain per cent return, one-half of excess should be used in reduction of future rates, and Public Utilities Commission, after full hearing on proper notice, directed electric company to file new lower rate schedules, the new rate order, which would allow fair return on fair valuation, was not invalid on ground that company had not consented thereto nor on ground that valuation requirements of statute had not been complied with. D.C. Code 1940, §§ 43-101 to 43-1007, 43-301, 43-317, 43-411, 43-306, 43-702. Potomac Elec. Power Co. v. Public Utilities Commission of District of Columbia, 158 F.2d 521, 1946 U.S. App. LEXIS 3272 (1946).

§ 34-1107. Valuation; notice and hearing; statement of valuation to be filed.

Before final determination of such value the Commission shall, after notice

of not less than 30 days to the public utility, hold a public hearing as to such valuation in the manner hereinafter provided for a hearing, which provisions, so far as applicable, shall apply to such hearing. The Commission shall, within 10 days after such valuation is determined, serve a statement thereof upon the public utility interested, and shall file a like statement with the District committees in Congress.

(Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 8.)

Cross references. — Rules and regulations, power of Commission to adopt, see § 34-902.

Prior Codifications. — 1981 Ed., § 43-507. 1973 Ed., § 43-307.

§ 34-1108. Revaluation.

The Commission may at any time, on its own initiative, make a revaluation of the property of any public utility.

(Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 9.)

Cross references. — Investigations of public utilities, assessing expenses, see § 34-912.

Valuation instruction, Commission's request from court of appeals, see § 34-604.

Prior Codifications. — 1981 Ed., § 43-508. 1973 Ed., § 43-308.

§ 34-1109. Uniform accounts to be rendered; separate account of other business may be required.

Every public utility shall keep and render to the Commission, in the manner and form prescribed by the Commission, uniform accounts of all business transacted. Every public utility engaged directly or indirectly in any other business than that of the conduct of a street railway, or the production, transmission, or furnishing of heat, light, water, or power, or the conveyance of telegraph or telephone messages, shall, if required by the Commission, keep and render separately to the Commission in like manner and form the accounts of all such other business, in which case all the provisions of this subtitle shall apply with like force and effect to the books, accounts, papers, and records of such other business.

(Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 10.)

Cross references. — Commission may compel production of records and attendance of witnesses from public utility, see § 34-905.

Duty of public utilities to disclose records and reports to Commission, see § 34-907.

Investigating agent appointed by Commission, powers and duties, see § 34-906.

Prior Codifications. — 1981 Ed., § 43-509. 1973 Ed., § 43-309.

§ 34-1110. Commission to prescribe forms of books and records.

The Commission shall prescribe the forms of all books, accounts, papers, and records required to be kept, and every public utility is required to keep and render its books, accounts, papers, and records accurately and faithfully in the manner and form prescribed by the Commission, and to comply with all

directions of the Commission relating to such books, accounts, papers, and records. Insofar as practicable for the purposes of this subtitle, the form prescribed shall be the form accepted by the Interstate Commerce Commission.

(Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 11.)

Cross references. — Utility failure to disclose, fraud, fines and penalties, see § 34-705.

Prior Codifications. — 1981 Ed., § 43-510. 1973 Ed., § 43-310.

CASE NOTES

In general.

The statutes confer broad discretion upon the Public Utilities Commission in regulating the accounting procedures of the utilities company under its jurisdiction. D.C. Code 1951, §§ 43-310, 43-314. D.C. Transit System, Inc. v. Public Utilities Commission of Dist. of Col., 292 F.2d 734, 1961 U.S. App. LEXIS 4461 (C.A.D.C. 1961).

Order of the Public Utilities Commission directing transit company to transfer a sum from the proceeds of the sale of property from its earned surplus account to three different accounts was not unreasonable, arbitrary or capricious. D.C. Code 1951, §§ 43-310, 43-314, 43-706. D.C. Transit System, Inc. v. Public Utilities Commission of Dist. of Col., 292 F.2d 734, 1961 U.S. App. LEXIS 4461 (C.A.D.C. 1961).

§ 34-1111. Commission to furnish blank forms.

The Commission shall cause to be prepared suitable blanks for carrying out the purposes of this subtitle, and shall when necessary furnish such blanks to each public utility.

(Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 12.)

Prior Codifications. — 1981 Ed., § 43-511. 1973 Ed., § 43-311.

§ 34-1112. Utilities to have offices in the District of Columbia; books and records to be kept in the District; records may be kept at general office of utility.

Each public utility shall have an office within the District of Columbia in which it shall keep all such books, accounts, papers, and records as shall be required by the Commission to be kept within the District of Columbia. No books, accounts, papers, or records required by the Commission to be kept within the District of Columbia shall be at any time removed from the District of Columbia, except upon such condition as may be prescribed by the Commission; provided, that public utilities operating in the District of Columbia and elsewhere who have their general or executive offices outside of the District, may continue to keep their books, accounts, records, and so forth, at their executive or general offices, such public utilities being required, however, to produce before the Commission such books, accounts, records, and papers from time to time as the Commission may order.

(Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 13.)

Cross references. — Rules and regulations, power of Commission to adopt, see § 34-902.

Prior Codifications. — 1981 Ed., § 43-512. 1973 Ed., § 43-312.

§ 34-1113. Accounts to be closed annually; verified balance sheet to be filed with Commission; copy of balance sheet to Congress.

The accounts shall be closed annually on the 31st day of December, and a balance sheet of that date promptly taken therefrom. On or before the 1st day of February following such balance sheet, together with such other information as the Commission shall prescribe, verified by an owner or officer of the public utility, shall be filed with the Commission, and a copy thereof transmitted to Congress.

(Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 14.)

Prior Codifications. — 1981 Ed., § 43-513. 1973 Ed., § 43-313.

§ 34-1114. Examination and audit of accounts; allocation of items to accounts; authority of agents, accountants, and examiners.

The Commission shall provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the Commission. The agents, accountants, or examiners employed by the Commission shall have authority, under the direction of the Commission, to inspect and examine any and all books, accounts, papers, records, and memoranda kept by such public utility.

(Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 15.)

Cross references. — Investigations of public utilities, assessing expenses, see § 34-912.

Investigations of public utility books and officers by Commission, see § 34-904.

Rules and regulations, power of Commission to adopt, see § 34-902.

Prior Codifications. — 1981 Ed., § 43-514. 1973 Ed., § 43-314.

CASE NOTES

In general.

The statutes confer broad discretion upon the Public Utilities Commission in regulating the accounting procedures of the utilities company under its jurisdiction. D.C. Code 1951, §§ 43-310, 43-314. D.C. Transit System, Inc. v. Public Utilities Commission of Dist. of Col., 292 F.2d 734, 1961 U.S. App. LEXIS 4461 (C.A.D.C. 1961).

Order of the Public Utilities Commission directing transit company to transfer a sum from the proceeds of the sale of property from its earned surplus account to three different accounts was not unreasonable, arbitrary or capricious. D.C. Code 1951, §§ 43-310, 43-314, 43-706. D.C. Transit System, Inc. v. Public Utilities Commission of Dist. of Col., 292 F.2d 734, 1961 U.S. App. LEXIS 4461 (C.A.D.C. 1961).

§ 34-1115. Depreciation account; rates of depreciation; application of depreciation fund.

Every public utility shall carry a proper and adequate depreciation account.

The Commission shall ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each public utility. These rates shall be such as will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the Commission. The Commission may make changes in such rates of depreciation from time to time as it may find to be necessary. The Commission shall also prescribe rules, regulations, and forms of accounts regarding such depreciation which the public utility is required to carry into effect. The Commission shall provide for such depreciation in fixing the rates, tolls, and charges to be paid by the public. All moneys in this fund may be expended in keeping the property of such public utility in repair and good and serviceable condition for the use to which it is devoted, or invested, and, if invested, the income from the investments shall also be carried in the depreciation fund. This fund and the proceeds thereof shall be used for no other purpose than as provided in this section, unless with the consent and by order of the Commission.

(Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 16.)

Cross references. — Public Service Commission, creation, powers and duties, see § 34-802.

Prior Codifications. — 1981 Ed., § 43-515. 1973 Ed., § 43-315.

§ 34-1116. Commission to keep informed of new construction; construction account.

The Commission shall keep itself informed of all new construction, extensions, and additions to the property of all public utilities, and shall prescribe the necessary forms, regulations, and instructions to the officers and employees of all public utilities for the keeping of construction accounts, which shall clearly distinguish all operating expenses and new construction.

(Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 17.)

Cross references. — Commission's authority to order improvements and repairs, see § 34-808.

Public Service Commission, creation, powers and duties, see § 34-802.

Prior Codifications. — 1981 Ed., § 43-516. 1973 Ed., § 43-316.

CASE NOTES

In general.

Statement, in natural gas rate order, that since utility's estimates were the best available in the record the Public Service Commission accepted utility's four-year construction budget as not being unreasonable was not to be read as placing burden of production or persuasion on consumer advocate as regards proof of reasonableness of the budget. D.C. Code 1981, §§ 43-516, 43-1002. Office of People's Counsel v. Public Service Com., 482 A.2d 404, 1984 D.C. App. LEXIS 507 (1984).

§ 34-1117. Sliding scale of rates and dividends.

Nothing in this subtitle shall be taken to prohibit a public utility, with the

consent of the Commission, from providing a sliding scale of rates and dividends according to what is commonly known as the Boston sliding scale, or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the Commission, after investigation, to be reasonable and just and not inconsistent with the purposes of this subtitle. Such arrangement shall be under the supervision and regulation of the Commission. The Commission shall ascertain, determine, and order such rates, charges, and regulations, and the duration thereof, as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges, and regulations as the Commission may ascertain and determine to be necessary and reasonable, and the right to alter or amend all orders relative thereto, is reserved and vested in the Commission notwithstanding any such arrangement and mutual agreement.

(Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 18.)

Cross references. — Investigations of public utilities, assessing expenses, see § 34-912.

Public Service Commission, creation, powers and duties, see § 34-802.

Rate change procedures, appeal and review, see § 34-901.

Rates and charges, Commission's power to regulate, see § 34-709.

Prior Codifications. — 1981 Ed., § 43-517. 1973 Ed., § 43-317.

CASE NOTES

In general.

Emergency Fleet Corporation, though private corporation in form, held entitled to government rate on telegraph messages. 46 U.S.C. § 810; 40 Stat. 182, amended by Act April 22, 1918, c. 62, §§ 1, 2, 40 Stat. 535; Post Roads Act, 47 U.S.C. §§ 1-3, 6. U.S. Shipping Board Emergency Fleet Corporation v. Western Union Telegraph Co., 48 S.Ct. 198, 1928 U.S. LEXIS 44 (U.S.Dist.Col. 1928).

Emergency Fleet Corporation, having no individual credit, held entitled to government rate on telegraph messages, notwithstanding contention that it contracted on its own behalf. 46 U.S.C. § 810; 40 Stat. 182, amended by Act April 22, 1918, c. 62, §§ 1, 2, 40 Stat. 535; Post Roads Act, 47 U.S.C. §§ 1-3, 6. U.S. Shipping Board Emergency Fleet Corporation v. Western Union Telegraph Co., 48 S.Ct. 198, 1928 U.S. LEXIS 44 (U.S.Dist.Col. 1928).

Emergency Fleet Corporation held entitled to government rate on telegraph messages, notwithstanding competition with private shipping. 46 U.S.C. § 810; 40 Stat. 182, amended by Act April 22, 1918, c. 62, §§ 1, 2, 40 Stat. 535; Post Roads Act, 47 U.S.C. §§ 1-3, 6. U.S. Shipping Board Emergency Fleet Corporation v. Western Union Telegraph Co., 48 S.Ct. 198, 1928 U.S. LEXIS 44 (U.S.Dist.Col. 1928).

If gas rates are to be granted for emergency purposes in a summary proceeding before the District of Columbia Public Utilities Commission, provision should be made for adjustment of subsequent rates, as under the sliding scale arrangement, if upon a statutory full rate hearing it should be found that the emergency rates had produced either excessive or inadequate returns. D.C. Code 1940, §§ 43-301, 43-317. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

§ 34-1118. Utilities to furnish accounts and reports; information to be included; notice of certain filings to be served on People's Counsel; disclosure of information and documents by investigated utility.

(a) Each public utility shall furnish to the Commission in such form and at

such times as the Commission shall require, such accounts, reports, and information as shall show in itemized detail; depreciation; salaries and wages; legal expenses; taxes and rentals; quantity and value of material used; receipts from residuals, by-products, services, or other sales; total and net costs; net and gross profits; dividends and interest; surplus or reserve; prices paid by consumers; and in addition such other items, whether of a nature similar to those hereinbefore enumerated or otherwise, as the Commission may prescribe, in order to show completely and in detail the entire operation of the public utility in furnishing its product or service to the public.

(b) A notice of filing of all reports, applications, petitions, tariffs, and all other documents that affect the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission that are filed by any public utility with the Commission or with federal and District of Columbia agencies, courts, and commissions shall be concurrently served on the Office of the People's Counsel at the time of filing and shall include the subject and purpose of the filing.

(c) In connection with any investigation or proceeding under § 34-804(d)(1), (3), or (4), as amended by the Utility Regulatory Assessment Clarification Act of 1984, the Office shall have the right to obtain from the public utility investigated all information and documents reasonably relevant and material to the investigation or proceeding. Should any public utility refuse or fail to produce the reasonably relevant information or documents in a timely manner, the Office may, by motion, petition the Commission to issue an order compelling its production. When necessary to protect the disclosure of trade secrets and other confidential research, development, or commercial information, the Commission may, where appropriate, issue a protective order placing conditions on the release of the information.

(Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 19; Mar. 14, 1985, D.C. Law 5-153, § 3(b), 31 DCR 6440.)

Cross references. — Office of the People's Counsel, creation, powers and duties, see § 34-804.

Reports from gas companies, see § 34-1607.

Reports from street railroad corporations, see § 35-215.

Rules and regulations, power of Commission to adopt, see § 34-902.

Prior Codifications. — 1981 Ed., § 43-518. 1973 Ed., § 43-318.

Legislative history of Law 5-153. — For legislative history of D.C. Law 5-153, see Historical and Statutory Notes following § 34-706.

References in text. — The "Utility Regulatory Assessment Clarification Act of 1984," referred to in the first sentence of subsection (c) of this section, is D.C. Law 5-153.

CASE NOTES

ANALYSIS

Due process.
In general.

Due process.

District of Columbia's Utility Regulatory Assessment and Clarification Act is not unconstitutionally defective on ground that it grants Office of People's Counsel broad data gathering authority violating public utilities' due process rights by unreasonably subjecting public utilities to interruption of business and to substantial expense necessary to comply with People's Counsel's unrestricted demands; statute limits data gathering authority of Office to information reasonably relevant and material to investigation of proceeding, and in event of noncompliance by public utilities, Office has no authority to order compliance, but must petition Public Service Commission for order com-

pelling production and Commission has authority to protect from disclosure trade secrets and other confidential research, development, or commercial information. D.C. Code 1981, § 43-518(c). Potomac Electric Power Co. v. District of Columbia Government, 651 F. Supp. 907, 1986 U.S. Dist. LEXIS 16007 (1986).

In general.

If gas rates are to be granted for emergency purposes in a summary proceeding before the District of Columbia Public Utilities Commission, provision should be made for adjustment of subsequent rates, as under the sliding scale arrangement, if upon a statutory full rate hearing it should be found that the emergency rates had produced either excessive or inadequate returns. D.C. Code 1940, §§ 43-301, 43-317. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

District of Columbia Public Utilities Commission not inquiring into issues necessary to determination of fair rate of return in gas rate proceeding could not rely on finding in some prior rate proceeding that six per cent was fair rate of return, where risk factor had been materially reduced in recent years and pertinent local conditions and economic factors had not remained static. D.C. Code 1940, §§ 43-301, 43-317. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

Public Service Commission acted arbitrarily and contrary to law in denying Office of People's Counsel's (OPC) motions to compel electric utility to disclose certain diagrams and maps depicting electrical substations, transformers, and feeders for purposes of investigation into power outages; Commission only addressed the harm that might have ensued from public disclosure of the requested documents, and Commission made no independent inquiry as to whether the goal of protecting the documents against public disclosure could have been achieved without barring OPC from obtaining them, thus, Commission made no finding that restriction on OPC's obtaining documents was necessary to protect documents. Office of the People's Counsel v. PSC of the Dist. of Columbia, 21 A.3d 985, 2011 D.C. App. LEXIS 357 (2011).

§ 34-1119. Annual report of Commission.

The Commission shall publish annual reports showing its proceedings relating to all the public utilities of each kind in the District of Columbia, and such other occasional reports as it may deem advisable. The Commission shall also publish in its annual reports the value of all property actually used and useful for the convenience of the public, of every public utility as to whose rates, charges, service, or regulations any hearing has been held by the Commission or the value of whose property has been ascertained by it under the provisions of this subtitle.

(Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 20.)

Prior Codifications. — 1981 Ed., § 43-519. 1973 Ed., § 43-319.

§ 34-1120. Commission to fix adequate and serviceable standards; regulations for testing products, service, and meters.

The Commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other condition pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for examining and testing such product or service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements, and every public utility is required to carry into effect all orders issued by the Commission relative thereto.

(Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 21.)

Cross references. — Gas and electric meters, inspections, rules and regulations, see § 34-303.

Public Service Commission, creation, powers and duties, see § 34-802.

Prior Codifications. — 1981 Ed., § 43-520. 1973 Ed., § 43-320.

§ 34-1121. Examination and test of appliances.

The Commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliance tested upon payment of the fees fixed by the Commission. The Commission shall declare and establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance be found defective or incorrect to the disadvantage of the consumer or user.

(Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 22.)

Prior Codifications. — 1981 Ed., § 43-521. 1973 Ed., § 43-321.

§ 34-1122. Material and equipment for tests; entry on premises of utilities for purpose of tests.

The Commission may purchase such materials, apparatus, and standard measuring instruments for such examination and tests as it may deem necessary. The Commission, its agents, experts, or examiners, shall have power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided for in this subtitle, and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor.

(Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 23.)

Cross references. — Destruction of Commission property, punishment, see § 34-707.

Prior Codifications. — 1981 Ed., § 43-522. 1973 Ed., § 43-322.

§ 34-1123. Schedule of rates to be filed; existing rates to remain in force until changed.

Every public utility shall file with the Commission, within a time to be fixed by the Commission, schedules, which shall be open to public inspection, showing all rates, tolls, and charges which it has established and which are in force at the time for any service performed by it within the District of Columbia, or for any service in connection therewith or performed by any public utility controlled or operated by it. The rates, tolls, and charges shown on such schedules shall not exceed the rates, tolls, and charges allowed by law on March 4, 1913, and shall be the lawful rates, tolls, and charges within the District of Columbia, and shall remain and be in force until set aside by the Commission.

(Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 24.)

Cross references. — Rate change procedures, appeal and review, see § 34-901.

Prior Codifications. — 1981 Ed., § 43-523. 1973 Ed., § 43-323.

CASE NOTES

In general.

Courts of District of Columbia cannot compel utilities commission of District to fix reasonable rates on gas sold by company within District to alleged subsidiary outside District. Interstate Commerce Act, § 1, as amended by Act June 18, 1910, § 7, and Act Feb. 28, 1920, § 400 (49 U.S.C. § 1); Act March 4, 1913, 37 Stat. 975. Galloway v. Bell, 11 F.2d 558, 1926 U.S. App. LEXIS 2537 (1926).

Absent a controlling statutory provision, no reason existed to construe telephone company's "new service" offering, viz., a technologically improved PBX system, as essentially different from a rate change application, wherein Public Service Commission approval is statutorily required. D.C. Code §§ 43-323, 43-401, 43-408, 43-411, 43-701. Chesapeake & Potomac Tel. Co. v. Public Service Com., 378 A.2d 1085, 1977 D.C. App. LEXIS 394 (1977).

§ 34-1124. Rules and regulations affecting rates to be filed.

Every public utility shall file with and as a part of such schedule all rules and regulations that in any manner affect the rates charged or to be charged for any service.

(Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 25.)

Cross references. — Rate change procedures, appeal and review, see § 34-901.

Prior Codifications. — 1981 Ed., § 43-524. 1973 Ed., § 43-324.

§ 34-1125. Copy of rate schedule to be available for public inspection.

A copy of so much of said schedules as the Commission shall deem necessary for the use of the public shall be printed in plain type and kept on file in every station and office of such public utility where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public and so as to be conveniently inspected.

(Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 26.)

Section references. — This section is referred to in § 34-1126.

Prior Codifications. — 1981 Ed., § 43-525. 1973 Ed., § 43-325.

§ 34-1126. Schedule of joint rates to be filed.

Where a schedule of joint rates or charges is, or may be, in force between 2 or more public utilities, such schedule shall in like manner be printed and filed with the Commission, and so much thereof as the Commission shall deem necessary for the use of the public shall be filed in every such station or office, as provided in § 34-1125.

(Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 27.)

Prior Codifications. — 1981 Ed., § 43-526. 1973 Ed., § 43-326.

§ 34-1127. Change in schedule; notice.

No change shall be made in any schedule, including schedules of joint rates, except upon 10 days notice to the Commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof 10 days prior to the time the same are to take effect; provided, that the Commission, upon application of any public utility, may prescribe a less time within which a reduction may be made.

(Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 28.)

Cross references. — Rate change procedures, appeal and review, see § 34-901.

Rate changes, approval of Commission, see § 34-601.

Prior Codifications. — 1981 Ed., § 43-527. 1973 Ed., § 43-327.

CASE NOTES

In general.

Public Service Commission's interpretation of rate-making procedure which allowed less comprehensive procedure for tariffs which did not result in major impact on financial operation was reasonable. D.C. Code 1981, § 43-527. Professional Answering Service, Inc. v. Chesapeake & Potomac Tel. Co., 565 A.2d 55, 1989 D.C. App. LEXIS 200 (1989).

Since tariff involved only a repagination, use of letter of acceptance procedure for public utility tariff was all that was required. D.C. Code 1981, § 43-527. Professional Answering Service, Inc. v. Chesapeake & Potomac Tel. Co., 565 A.2d 55, 1989 D.C. App. LEXIS 200 (1989).

Absent a controlling statutory provision, no reason existed to construe telephone company's "new service" offering, viz., a technologically improved PBX system, as essentially different from a rate change application, wherein Public Service Commission approval is statutorily required. D.C. Code §§ 43-323, 43-401, 43-408, 43-411, 43-701. Chesapeake & Potomac Tel. Co. v. Public Service Com., 378 A.2d 1085, 1977 D.C. App. LEXIS 394 (1977).

§ 34-1128. New schedules to be filed; summaries of rates to be provided upon request.

(a) Copies of all new schedules shall be filed, as hereinbefore provided, in every station and office of such public utility where payments are made by consumers or users 10 days prior to the time the same are to take effect, unless the Commission shall prescribe a less time.

(b) Summaries of all rate schedules, including all rates, explanations, and conditions of service, applicable as to the type of service received by a ratepayer shall be provided as of right by the public utility to any ratepayer upon request and without expense to the ratepayer.

(Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 29; Mar. 14, 1985, D.C. Law 5-153, § 3(c), 31 DCR 6440.)

Cross references. — Rate change procedures, appeal and review, see § 34-901.

Prior Codifications. — 1981 Ed., § 43-528. 1973 Ed., § 43-328.

Legislative history of Law 5-153. — For legislative history of D.C. Law 5-153, see Historical and Statutory Notes following § 34-1103.

§ 34-1129. Utility not to receive greater or less compensation than fixed in schedule.

It shall be unlawful for any public utility to charge, demand, collect, or receive a greater or less compensation for any service performed by it within the District of Columbia, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect, or receive any rate, toll, or charge not specified in such schedules. The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed as provided in this subtitle.

(Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 30.)

Cross references. — Rate change procedures, appeal and review, see § 34-901.

Rate discrimination, punishment, see §§ 34-702 and 34-704.

Prior Codifications. — 1981 Ed., § 43-529. 1973 Ed., § 43-329.

CASE NOTES

In general.

Where substandard units had different utility equipment, rented at different prices and had varying number of occupants, and there was no recognized formula for distributing gas and electrical charges among the users it would not be appropriate for court to order tenants to organize committee which would enter into contracts with utility companies for continuation of services, in tenant's proceeding for equitable relief directing that utility services be continued after owner refused to honor utility bills. D.C. Code § 43-329. Masszonia v. Washington, 315 F. Supp. 529, 1970 U.S. Dist. LEXIS 10825 (D.D.C1970).

Neither filed rate doctrine nor statute codifying doctrine required commodity charges for steam and chilled water service provided by steam, chilled water, and natural gas utility to be based on utility's superseded interruptible natural gas rate as stated in steam and chilled water rate schedule rather than on subsequent superseding interruptible gas rate; steam and chilled water customers experienced no unforeseeable liability from interruptible rate substitution for commodity charge purposes, and steam and chilled water rate schedule's continued reference to superseded interruptible rate schedule was, in effect, dead letter on which customers could not place any reliance. D.C. Code 1981, § 43-529. Watergate E. v. District of Columbia Pub. Serv. Comm'n, 662 A.2d 881, 1995 D.C. App. LEXIS 137 (1995).

§ 34-1130. Commission may prescribe changes in form of schedule.

The Commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient.

(Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 31.)

Cross references. — Rate change procedures, appeal and review, see § 34-901.

Prior Codifications. — 1981 Ed., § 43-530. 1973 Ed., § 43-330.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 107 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

Temporary Addition of Section. — For temporary (225 day) addition of § 43-531 1981 Ed., see § 9 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) addition of § 43-531 1981 Ed., see § 9 of Child Support and Welfare Reform Compliance Temporary Amendment

Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

Emergency legislation. — For temporary addition of § 43-531 1981 Ed., see § 9 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of § 43-531 1981 Ed., see § 9 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 9 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 9 of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 9 of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary amendment of section see § 3(1) of the Public Service Commission Independent Procurement Authority Emergency Amendment Act of 1999 (D.C. Act 13-52, April 6, 1999, 46 DCR 3638).

For temporary (90-day) amendment of section, see § 109 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of § 43-530.1 1981 Ed., see § 109 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 109 of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of § 43-530.1 1981 Ed., see § 109 of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 109 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90-day) addition of § 43-530.1 1981 Ed., see § 109 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 109 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

§ 34-1131. Information provided in association with a child support order.

A public utility shall provide to the organizational unit of the District government, or any successor organizational unit, that is responsible for administering or supervising the administration of the District's State Plan under title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), in response to an administrative subpoena issued pursuant to § 46-229.03(a)(2), financial or other information concerning a customer that is necessary to establish, modify, or enforce a support order.

(Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 31A, as added Apr. 3, 2001, D.C. Law 13-269, § 109, 48 DCR 1270.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 109 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary (90 day) addition of section, see § 109 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 109 of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 13-269. — Law 13-269, the "Child Support and Welfare Reform

Compliance Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-254, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on January 8, 2001, it was assigned Act No. 13-559 and transmitted to both Houses of Congress for its review. D.C. Law 13-269 became effective on April 3, 2001.

SUBTITLE II. CABLE TELEVISION.

CHAPTER 12. CABLE TELEVISION.

Subchapter I. Cable Television, 1981

Sec.
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§ 34-1201. Purpose. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 2, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 3(1), 30 DCR 4289; Nov. 15, 1983, D.C. Law 5-42, § 4(a), 30 DCR 499; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1801.

Temporary Amendment of Section. — For temporary (225 day) extension of the term of the franchise of District Cablevision Limited Partnership, see §§ 2 to 8 of the Approval of the Extension of the Term of District Cablevision Limited Partnership Franchise Temporary Act of 2000 (D.C. Law 13-142, June 13, 2001, law notification 47 DCR 6092).

For temporary (225 day) amendment of section, see § 2 of the Approval of the Extension of the Term of Comcast Cablevision of the District, LLC's Franchise Temporary Act of 2001 (D.C. Law 14-12, July 10, 2001, law notification 48 DCR 6588).

Emergency legislation. — For temporary (90-day) authorization of extension of cable franchise term, see §§ 2 through 4 of the Approval of the Extension of the Term of District Cablevision Limited Partnership Franchise in the District of Columbia Emergency Act of 2000 (D.C. Act 13-314, April 17, 2000, 47 DCR 2847).

For temporary (90-day) amendment of section, see §§ 2 through 10 of the Approval of the Application for Transfer of the Franchise and the Cable Television System of District Cablevision Limited Partnership From AT&T Broadband, LLC to Comcast Cablevision, LLC Emergency Act of 2000 (D.C. Act 13-503, December 28, 2000, 48 DCR 445).

For temporary (90 day) extension of cable franchise term, see § 2 of Approval of the Extension of the Term of Comcast Cablevision of the District, LLC's, Franchise Emergency Act of 2001 (D.C. Act 14-23, March 21, 2001, 48 DCR 3309).

For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — Law 4-142, "Cable Television Communications Act of 1981", was introduced in Council and assigned Bill No. 4-35, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on March 9, 1982, and June 8, 1982, respectively. Approved without signature by the Mayor, it was assigned Act No. 4-208 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Histor-

ical and Statutory Notes following § 34-1202.01.

Legislative history of Law 5-42. — Law 5-42 was introduced in Council and assigned Bill No. 5-29, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on July 5, 1983, and September 6, 1983, respectively. Signed by the Mayor on September 22, 1983, it was assigned Act No. 5-67 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-193. — Law 14-193, the "Cable Television Reform Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-480, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on June 18, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 15, 2002, it was assigned Act No. 14-412 and transmitted to both Houses of Congress for its review. D.C. Law 14-193 became effective on October 9, 2002.

Editor's notes. — Appropriations authorized: Public Law 104-194, 110 Stat. 2363, the District of Columbia Appropriations Act, 1997, provided for the Cable Television Enterprise Fund, established by § 43-1801 et seq., $2,511,000 and 8 full-time equivalent positions (including $2,179,000 and 8 full-time equivalent positions from local funds and $332,000 from other funds).

Sections 2 through 6 of D.C. Law 13-211 approved the application for the transfer of the stock of District Cablevision, Inc., the general partner of District Cablevision Limited Partnership, a cable television system franchisee in the District of Columbia, to AT Corporation.

Sections 601 through 610 of D.C. Law 13-308 approved the application for transfer of the franchise and the Cable Television System of District Cablevision Limited Partnership from AT Broadband to Comcast Cablevision.

§ 34-1202. Definitions; rules of construction. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 3, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, §§ 2(a)-(h), 3 (2)-(4), 30 DCR 4289 June 1, 1984, D.C. Law 5-85, § 2(b), 31 DCR 1864; Apr. 9, 1997, D.C. Law 11-210, §§ 2(a), 3(a), 43 DCR 4702; Apr. 9, 1997, D.C. Law 11-255, § 46(a), 44 DCR 1271; May 9, 2000, D.C. Law 13-107, § 205, 47 DCR 1091; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1802.

§ 34-1202.01. Council authorized to grant franchise; franchise required; condition and term of franchise. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 3a, as added Oct. 22, 1983, D.C. Law 5-36, § 2(i), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(b), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1802.1.

Temporary Addition of Section. — For temporary (225 day) additions, see §§ 2, 3 of Comcast Cable Franchise Extension Temporary Act of 2002 (D.C. Law 14-161, June 25, 2002, law notification 49 DCR 6497).

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

For temporary (90 day) extension of cable franchise term, see § 2 of Approval of the Extension of the Term of the Franchise of Comcast Cablevision of the District, LLC, Congressional Review Emergency Act of 2001 (D.C. Act 14-63, June 6, 2001, 48 DCR 5710).

For temporary (90 day) extension of cable franchise term, see § 2 of Comcast Cable Fran-

chise Extension Emergency Act of 2002 (D.C. Act 14-298, March 13, 2002, 49 DCR 2652).

For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

For temporary (90 day) approval of franchise, see § 2 of Approval of the Franchise of Comcast Cablevision of the District to Provide Cable Service in the District of Columbia Emergency Act of 2002 (D.C. Act 14-410, July 15, 2002, 49 DCR 7322).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 5-85. — Law 5-85 was introduced in Council and assigned Bill No. 5-357, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on March 13, 1984, and March 27, 1984, respectively. Signed by the Mayor on April 5, 1984, it was assigned Act No. 5-123 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-210. — Law 11-210, the "Cable Television Franchise Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-173, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 6, 1996, it was assigned Act No. 11-386 and transmitted to both Houses of Congress for its review. D.C. Law 11-210 became effective April 9, 1997.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 13-107. — Law 13-107, the "Retail Electric Competition and Consumer Protection Act of 1999," was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — Law 5-36, "Cable Television Communications Act of 1981 Clarification Amendment Act of 1983," was introduced in Council and assigned Bill No. 5-170, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 21, 1983, and July 5, 1983, respectively. Signed by the Mayor on July 28, 1983, it was assigned Act No. 5-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-192. — Law 14-192, the "Approval of the Franchise of Comcast Cablevision of the District to Provide Cable Service in the District of Columbia Act of 2002", was introduced in Council and assigned Bill No. 14-650, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on June 18, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 15, 2002, it was assigned Act No. 14-411 and transmitted to both Houses of Congress for its review. D.C. Law 14-192 became effective on October 9, 2002.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

Short title. — Short title: The first section of D.C. Law 5-36 provided: "That this act may be cited as the 'Cable Television Communications Act of 1981 Clarification Amendment Act of 1983'."

Editor's notes. — Approval of amended limited partnership agreement: Pursuant to Resolution 6-624, the "Cable Television Franchise Limited Partnership Review and Approval Resolution of 1986," effective April 15, 1986, the Council approved the amended and restated partnership between District Cablevision, Inc. and Tele-Communications, Inc., to be known as District Cablevision Limited Partnership.

Tele-Communications, Inc. and Liberty Media Corporation Reorganization Disapproval Resolution of 1994: Pursuant to Resolution 10-368, effective June 24, 1994, the Council disapproved the District Cablevision Limited Partnership's Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise.

District of Columbia cable television franchise award: See Historical and Statutory Notes following § 34-1213.01.

Modification of Cable Television Franchise Agreement: See Historical and Statutory Notes following § 34-1213.01.

The Nashville Network Reinstatement Resolution of 1996: Pursuant to Resolution 11-411, approved July 3, 1996, and effective upon publication on July 19, 1996, Council directed the district Cablevision Limited Partnership to return The Nashville Network to District Cablevision.

Sections 2 through 4 of D.C. Law 14-192 provided:

"Sec. 2. Grant of franchise.

"Pursuant to the Cable Television Communications Act of 1981, effective August 21, 1982 (D.C. Law 4-142; D.C. Official Code § 34-1201 et seq.) ('Cable Act'), Comcast Cablevision of the District, LLC, is granted a 10-year, nonexclusive, revocable franchise to provide cable service in the District of Columbia. The franchise is subject to the provisions of the Cable Act and the terms and conditions of the cable franchise agreement approved by section 3."

"Sec. 3. Approval of franchise agreement.

"(a) The Council approves the proposed franchise agreement between the District and Comcast Cablevision of the District, LLC, transmitted to the Council by the Mayor on April 25, 2002, attached to this resolution and incorporated by reference, with the following modifications and conditions:

"(1) Section 1.5.3 is amended by inserting the phrase '(other than the Public Access Corporation)' after the phrase 'PEG Entities', wherever it appears.

"(2) Section 1.58 is amended by striking the phrase 'or any other PEG entity'.

"(3) Section 2.3.06 is amended as follows:

"(A) Strike the word 'but' and insert the phrase ', the Company is engaged in good-faith negotiations with the District regarding a renewal of the franchise, and' in its place.

"(B) Insert the phrase '; provided an extension under this section 2.3.06 shall not exceed six (6) months' after the phrase 'renewal term commences'.

"(4) Section 4.1.03(iv) is amended by adding the phrase '(except for channels allocated to the Mayor, the Council, or the Public Access Corporation, for which no PEG Operating Agreement shall be required)' after the phrase 'PEG Operating Agreements'.

"(5) Section 4.1.01 is amended by striking the phrase 'PEG Operating Agreement' wherever it appears and inserting the phrase 'PEG Operating Agreement or other notice' in its place.

"(6) Section 4.1.04 is amended by striking the phrase 'PEG Operating Agreement' and inserting the phrase 'PEG Operating Agreement or other notice' in its place.

"(7) Section 4.1.11 is amended by striking the phrase 'PEG Operating Agreement' and inserting the phrase 'PEG Operating Agreement or other notice' in its place.

"(8) Section 4.1.12(i) is amended as follows:

"(A) Strike the phrase 'Subject to the terms of its PEG Operating Agreement' and insert the phrase 'Subject to the terms of its PEG Operating Agreement, if any,' in its place.

"(B) Strike the phrase 'an approved PEG Operating Agreement' and insert the phase 'an approved PEG Operating Agreement or other notice' in its place.

"(9) Section 4.2.05 is amended by striking the sentence 'Rules and regulations adopted by the Public Access Corporation shall govern the use of Public Channel time, equipment, facilities, and other services.' and inserting the sentence 'Rules and regulations adopted by the Public Access Corporation shall govern the use of all Public Channels, including all matters related to governance, management, time, equipment, facilities, and other services.' in its place.

"(10) Section 5.3 is amended by striking the text after the phrase 'they are offered; (iv)' and insert the phrase 'bulk rates; or (v) any discounts, promotions, or reduced charges allowed by law or regulation.' in its place.

"(11) Section 7.3 is amended by striking the phrase 'transmission of this Agreement to the Council, and prior'.

"(12) Section 7.5 is amended by adding the sentence 'The Memorandum of Understanding shall require that the Company make at least good-faith efforts to contract, and procure at least 35% of its goods and services, with local, small, and disadvantaged business enterprises.' at the end.

"(13) Section 7.9 is amended by striking the phrase '(D.C. Official Code § 34-1202(24))' and inserting the phrase ', as the act was in effect as of June 1, 2002' in its place.

"(14) Section 8.1 is amended by striking the phrase 'Subject to Section 10.2 hereof, the' and inserting the word 'The' in its place.

"(15) Section 10.2 is amended as follows:

"(A) Strike the phrase 'power,' and insert the phrase 'power or other governmental power,' in its place.

"(B) Strike the phrase ', provided that the Company shall not be required to comply with any such statutes, rules, regulations, orders or other directives that take effect after the Effective Date to the extent such statutes, rules, regulations, orders or other directives are materially in conflict with the Company's rights and obligations as set forth in this Agreement.

Notwithstanding the preceding sentence, the Company shall comply with each statute, rule, regulation, order and directive of the District that is of general applicability'.

"(C) Add 2 new sentences at the end to read as follows:

"In addition to other rights reserved in this section, the District reserves its rights to enact and enforce laws to prohibit or regulate exclusive contracts and anticompetitive acts that have the purpose or effect of limiting competition for the provision of cable service or services similar to cable service, including exclusive programming agreements, and exclusive contracts with vendors to provide equipment, materials or services. The Company reserves its Constitutional contract rights as applicable to its rights and obligations as set forth in the Agreement."

"(16) Section 10.3.01 is amended by striking the sentence 'The Council shall provide the Company with fifteen (15) days' prior notice of any such hearing (seven (7) days' prior notice in the case of a roundtable) or any such longer notice period as may be required by applicable law or the Council's rules or procedures, provided that this sentence shall not limit in any way the Council's subpoena power under applicable law (Section 15.21 shall not apply to this sentence).'

"(17) Section 10.5.01(ix) is amended by adding the phrase 'including the First Source Agreement and the Memorandum of Understanding regarding the utilization of local, small, and disadvantaged business enterprises,' after the word 'obligations'.

"(18) Section 11.4.03 is amended by striking the sentence 'As provided in Section 11.4.01 of this Agreement, the Council shall act on the Company's petition within the transfer review period as determined under Sections 11.4. 1 and 11.4.02 of this Agreement.'

"(19) Section 13.4.02 is amended by adding the word 'written' before the word 'waiver', wherever it appears.

"(20) Section 15.21 is amended by striking the phrase ', but in all uses 'applicable law' shall be limited by Section 10.2 hereof'.

"(21) Appendix D.II.A.1 is amended by striking the phrase 'with respect to the two (2) Downstream Analog Channels allocated to it pursuant to Section 4.1.03 of this Agreement'.

"(22) Strike Appendix D.II.A.4.

"(23) Appendix D.II.B.1 is amended by striking the phrase 'PEG channels' and inserting the phrase 'Educational and Governmental Channels' in its place.

"(24) Appendix D.II.B.2 is amended by striking the phrase 'PEG channels' and inserting the phrase 'Educational and Governmental Channels' in its place.

"(25) Appendix F.I.A.1 is amended by striking the phrase 'in the Mayor's executive suite' and inserting the phrase 'the offices of Councilmembers and Council committees and in other Council offices, and in the Mayor's executive suite,' in its place.

"(26) Appendix F.II. is amended by adding the sentence '(The District shall deduct the study and installation costs from the advance payment of capital support after full payment, based on the pre-deduction amount, has been made to the Public Access Corporation.)'

"(27) Exhibit 1 to Appendix F is amended by striking the phrase 'DHS' in the row beginning with the phrase 'Dept. of Housing' and inserting the phrase 'DHCD' in its place.

"(28) Appendix H is amended by striking Section I.10 in its entirety and inserting a new Section I.10 to read as follows: "10. In the case of a transfer of interest pursuant to Section 11.1 of this Agreement, current financial statements showing the financial condition of the System as of the date of the petition or other written request, and pro forma financial projections for three (3) years, including a statement of projected income and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules. In the case of a transfer of control or stock pursuant to Section 11.2 of this Agreement, (a) such current financial statements and pro forma financial projections for the System (both as described in the preceding sentence) or alternatively (b) the pro forma financial information filed with the federal Securities and Exchange Commission relating to the proposed transaction."

"(b) The Chairman of the Council and the Mayor may sign the cable franchise agreement approved, as modified, by this section."

"Sec. 4. Approval of transfer of control.

"Pursuant to the Cable Television Communications Act of 1981, effective August 21, 1982 (D.C. Law 4-142; D.C. Official Code § 34-1201 et seq.), the franchise agreement between the District and District Cablevision Limited Partnership (dated September 30, 1985) and the franchise agreement approved by section 3, the Council approves the transfer of control from Comcast Corporation to AT&T Comcast Corporation of the franchises granted by:

"(1) This act; and

"(2) The District of Columbia Cable Television Franchise Award Act of 1984, effective March 14, 1985 (D.C. Law 5-163; D.C. Official Code § 34-1213.01 note)." = —

§ 34-1203. Establishment of the District of Columbia Cable Television Advisory Committee. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 4, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(j), 30 DCR 4289; Mar. 14, 1985, D.C. Law 5-159, § 16(a), 32 DCR 30; Apr. 9, 1997, D.C. Law 11-210, § 2(c), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

§ 34-1204. Duties of the Advisory Committee. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 5, 29 DCR 2872; May 20, 1983, D.C. Law 5-9, § 2, 30 DCR 1791; Aug. 2, 1983, D.C. Law 5-18, § 2, 30 DCR 3326; Oct. 22, 1983, D.C. Law 5-36, § 2(k), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(d), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1803.

§ 34-1205. Establishment of Office of Cable Television and Telecommunications; appointment of Executive Director. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 6, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(l), 30 DCR 4289; June 1, 1984, D.C. Law 5-85, § 2(a), 31 DCR 1864; Apr. 9, 1997, D.C. Law 11-210, § 2(e), 43 DCR 4702; May 9, 2000, D.C. Law 13-98, § 2, 47 DCR 789; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1804.

Prior Codifications. — 1981 Ed., § 43-1805.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Office of Cable Television and Telecommunications Temporary Amendment Act of 1999 (D.C. Law 13-31, October 8, 1999, law notification 46 DCR 8696).

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

For temporary (90-day) amendment of section, see § 2 of the Office of Cable Television and Telecommunications Emergency Amendment Act of 1999 (D.C. Act 13-74, May 26, 1999, 46 DCR 5168).

For temporary (90-day) amendment of section, see § 2 of the Office of Cable Television and Telecommunications Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-121, July 28, 1999, 46 DCR 6594).

For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 5-159. — Law 5-159 was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see His-

torical and Statutory Notes following § 34-1201.

Legislative history of Law 5-9. — Law 5-9 was introduced in Council and assigned Bill No. 5-147, which was retained by CouncilL. The Bill was adopted on first and second readings on March 15, 1983, and March 29, 1983, respectively. Signed by the Mayor on April 6, 1983, it was assigned Act No. 5-23 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-18. — Law 5-18 was introduced in Council and assigned Bill No. 5-148, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-35 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 5-85. — For legislative history of D.C. Law 5-85, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 13-98. — Law 13-98, the "Office of Cable Television and Telecommunications Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-210, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on December 4, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 10, 2000, it was assigned Act No. 13-244 and transmitted to both Houses of Congress for its review. D.C. Law 13-98 became effective on May 9, 2000.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201. = —

§ 34-1206. Powers and responsibilities of Office. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 7, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(m), 30 DCR 4289; June 1, 1984, D.C. Law 5-85, § 2(c), 31 DCR 1864; May 10, 1989, D.C. Law 7-231, § 47, 36 DCR 492; July 25, 1990, D.C. Law 8-151, § 2, 37 DCR 3741; Sept. 26, 1995, D.C. Law 11-52, §§ 807, 807a, 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-210, § 2(f), 43 DCR 4702; Apr. 9, 1997, D.C. Law 11-255, § 56, 44 DCR 1271; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1806.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 802(a) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, 42 DCR 1652).

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 5-85. — For legislative history of D.C. Law 5-85, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by

the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-151. — Law 8-151, the "Office of Cable Television Personal Property Insurance Authorization Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-545, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 1, 1990, and May 15, 1990, respectively. Signed by the Mayor on May 30, 1990, it was assigned Act No. 8-209 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

Resolutions. — Resolution 14-488, the "Cable Customer Service Regulations Approval Resolution of 2002", was approved effective June 28, 2002.

§ 34-1207. Duties of Executive Director. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 7, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(m), 30 DCR 4289; June 1, 1984, D.C. Law 5-85, § 2(c), 31 DCR 1864; May 10, 1989, D.C. Law 7-231, § 47, 36 DCR 492; July 25, 1990, D.C. Law 8-151, § 2, 37 DCR 3741; Sept. 26, 1995, D.C. Law 11-52, §§ 807, 807a, 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-210, § 2(f), 43 DCR 4702; Apr. 9, 1997, D.C. Law 11-255, § 56, 44 DCR 1271; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1807.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-85. — For legislative history of D.C. Law 5-85, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1207.01. Cable Television special account. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 8, 29 DCR 2872; June 1, 1984, D.C. Law 5-85, § 2(d), 31 DCR 1864; Apr. 9, 1997, D.C. Law 11-210, § 2(g), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1807.1.

1981 Ed., § 43-1807.1.

Emergency legislation. — For temporary amendment of section, see § 1512 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), § 1512 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669), and § 1512 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90-day) amendment of section, see § 1512 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 7-93. — For legislative history of D.C. Law 7-93, see Historical and Statutory Notes following § 34-1248.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 12-175. — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

Editor's notes. — Application of D.C. Law 12-175: Section 1914 of D.C. Law 12-175 provided that § 1912 shall apply as of October 1, 1998.

§ 34-1208. Powers of Public Service Commission. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 9, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(o), 30 DCR 4289; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1808.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1209. Mandatory provisions of request for proposal. [Repealed.]

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 10, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(p), 30 DCR 4289; Nov. 15, 1983, D.C. Law 5-42, § 4(b), 30 DCR 4999; Apr. 9, 1997, D.C. Law 11-210, § 3(c), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1809.

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 5-42. — For legislative history of D.C. Law 5-42, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

Editor's notes. — Recommended revision of draft of request for proposals and cable franchise application: Pursuant to Resolution 5-388, the "Cable Television Franchise Request for Proposals, Applications, and Procedures Recommendations Resolution of 1983," effective October 18, 1983, the Council recommended that the District of Columbia Cable Design Commission revise the draft request for proposals and cable franchise application submitted to the Chairman of the Council, July 1, 1983.

Revised request for proposals approved: Pursuant to Resolution 5-422, the "Cable Television Franchise Revised Request for Proposals Approval Resolution of 1983," effective November 15, 1983, the Council approved the request for proposals as revised pursuant to the Cable Television Franchise Request for Proposals Applications, and Procedures Recommendations Resolution of 1983.

Standard format proposed franchise agreement approved: Pursuant to Resolution 5-549, the "Cable Television Franchise Agreement Format Approval Resolution of 1984," effective February 14, 1984, the Council approved the use by the District of Columbia Cable Design Commission of a standard format proposed franchise agreement.

§ 34-1210. Submission of applications. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 11, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(q), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(i), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1810.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1211. Grant of authority. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 12, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 3(5), 30 DCR 4289; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1811.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1212. Evaluation of applications. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 13, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(r), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, §§ 2(j), 3(d), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1812.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

Editor's notes. — Procedures approved for consideration of applications: Pursuant to Resolution 5-550, the "District of Columbia Cable Television Design Commission Evaluation and Clarification Procedures Approval Resolution of 1984," effective February 14, 1984, the Council approved the evaluation and clarification procedures for the District of Columbia Cable Television Design Commission to consider applications to construct and operate a cable television system in the District of Columbia, which were submitted by the Commission to the Council on January 12, 1984.

§ 34-1213. Submission of proposed franchise agreement. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 14, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(s), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(k), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1813.

§ 34-1213.01. Grant of franchises. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 14a, as added Oct. 22, 1983, D.C. Law 5-36, § 2(t), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(l), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1813.1.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

For temporary (90 day) amendment of section, see §§ 2 and 3 of Comcast Cable Franchise One-Month Extension Emergency Act of 2002 (D.C. Act 14-382, June 10, 2002, 49 DCR 5698).

For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

Legislative history of Law 14-49. — Law 14-49, the "Approval of the Extension of the Term of the Franchise of Comcast Cablevision Act of 2001", was introduced in Council and assigned Bill No. 14-116, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on June 26, 2001 and July 10, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act no. 14-127 and transmitted to both Houses of Congress for its review. D.C. Law 14-49 became effective on October 26, 2001.

Editor's notes. — District of Columbia cable television franchise award: D.C. Law 5-163, the "District of Columbia Cable Television Franchise Award Act of 1984," granted to District Cablevision, Inc., a revocable franchise for a 15-year period for the authority, right, and privilege to construct, reconstruct, operate, and maintain a cable television system within the District of Columbia. The act provided as follows: The Council of the District of Columbia finds that: (a) Pursuant to the Cable Television Communications Act of 1981, effective October 22, 1983 (D.C. Law 4-142; D.C. Code, sec. 34-1201 et seq.), the Council of the District of Columbia ("Council") is authorized to grant by act 1 or more revocable franchises for the right to construct and operate a cable television system within the public ways of specified areas of the District of Columbia. (b) Pursuant to an evaluation and selection process established by the Cable Television Communications Act of 1981, effective October 22, 1983 (D.C. Law 4-142; D.C. Code, sec. 34-1201 et seq.), and pursuant to the Negotiation of the Final Terms of a Proposed Agreement for the Award of a Cable Television Franchise for the District of Columbia Designation Resolution of 1984, effective July 10, 1984 (Res. 5-788; 31 DCR 3673), District Cablevision, Inc., ("Grantee") has been determined to be the cable television franchise applicant which will best serve the public interest in the delivery of cable television service to the citizens of the District of Columbia. (c) Pursuant to the Negotiation of the Final Terms of a Proposed Agreement for the Award of a Cable Television Franchise for the District of Columbia Designation Resolution of 1984, effective July 10, 1984 (Res. 5-788; 31 DCR 3673), the Council directed that negotiations be undertaken with the Grantee by a city negotiating team for the purpose of finalizing the terms of a proposed franchise agreement, subject to Council approval. (d) The city negotiating team has completed its mandate and has successfully negotiated the final terms of a proposed franchise agreement with the Grantee, the terms of which have been reviewed by the Council and are approved. Sec. 3. Grant of the Franchise. Pursuant to Section 14a(a) of the Cable Television Communications Act of 1981, effective October 22, 1983 (D.C. Law 4-142; D.C. Code, sec. 34-1213.01(a)), District Cablevision, Inc., a corporation with its principal place of business located within the District of Columbia, is granted of itself, its successors, and assigns a revocable right to construct, reconstruct, operate, and maintain for a 15-year period from the effective date of this act, a cable television system within the entirety of the District of Columbia, subject to the terms, conditions, and requirements specified in the Franchise Agreement ("Agreement") and the laws and regulations of the District of Columbia and the United States applicable to cable television franchises, facilities, and services. Sec. 4. Terms of the Franchise. (a) The Grantee shall, in accepting this franchise, meet all terms and conditions of the law of the District of Columbia and the United States applicable to cable television franchises, facilities, and services. (b) The Agreement (and exhibits A through H thereof) appended to this act specifying terms and conditions accompanying this grant of a franchise is incorporated by reference and made a part of this franchise grant. The Grantee shall abide in and shall meet all terms and conditions of the Agreement for the entire duration of the franchise term. Any amendment or modification of the Agreement, except to the extent otherwise provided in the Agreement, shall be accomplished by act of the Council. (c) The terms, conditions, and provisions of the Agreement shall remain in full force and effect notwithstanding any inconsistency or repugnancy with terms, conditions, and provisions of the Cable Television Communications Act of 1981, effective October 22, 1983 (D.C. Law 4-142; D.C. Code, sec. 34-1201 et seq.), in effect prior to this act. Any term, condition, or provision of the Cable Television Communications Act of 1981, effective October 22, 1983 (D.C. Law 4-142; D.C. Code, sec. 34-1201 et seq.), in effect prior to this act which is inconsistent or repugnant

with a term, condition, or provision of the Agreement shall be deemed repealed by this act to the extent of its inconsistency or repugnancy with the Agreement. (d) Termination, revocation, and suspension of the franchise shall lie as provided by law and the Agreement. The rights granted by this act shall automatically expire as provided in the Agreement for failure by the Grantee to meet any condition specified in section 3.12.01 of the Agreement. The District of Columbia Office of Cable Television ("Office") shall give the Council notice of a failure by the Grantee to meet any condition specified under section 3.12.01 of the Agreement within 3 days of the failure, and shall publish the notice in the District of Columbia Register. Expiration of franchise rights for failure to meet a condition of section 3.12.01 of the Agreement shall be automatically effective upon the publication of notice by the Office in the District of Columbia Register that the Grantee's rights are terminated by reason of Grantee failure to meet a condition of section 3.12.01 of the Agreement. (e) The Agreement appended to this act shall be executed by the Grantee before the effective date of this act. All rights and privileges granted pursuant to this act shall automatically terminate upon the failure by the Grantee to execute the Agreement by the time specified in this subsection. Modification of Cable Television Franchise Agreement: D.C. Law 6-59, effective November 19, 1985, as amended by § 11 of D.C. Law 6-192, effective February 24, 1987, enacted the Cable Television Franchise Agreement Modification Act of 1985, and D.C. Law 7-93, effective March 16, 1988, enacted the Cable Television Communications Act of 1981 Amendment Act of 1987, to amend the District of Columbia Cable Television Franchise Award Act of 1984, the Cable Television Communications Act of 1981, and the Cable Television Franchise Agreement between District Cablevision, Inc., and the District of Columbia to modify certain terms, conditions and requirements of the District of Columbia Cable Television Franchise. Negotiat

Sections 2 and 3 of D.C. Law 14-49, 48 DCR 7936, provided:

"Sec. 2. Definitions.

"For the purposes of this act, the term:

"(1) 'Cable Act' means the Cable Television Communications Act of 1981, effective August 21, 1982 (D.C. Law 4-142; D.C. Official Code § 34-1201 et seq.).

"(2) 'Franchise' means the non-exclusive right to construct, reconstruct, operate, and maintain a cable television system in the District of Columbia granted by the District of Columbia Cable Television Franchise Award Act of 1984, effective March 14, 1985 (D.C. Law 5-163; D.C. Official Code § 34-1213.01 note).

"(3) 'Franchise Agreement' means the cable franchise agreement entered into by and between the District of Columbia and District Cablevision Limited Partnership, as amended, approved by the District of Columbia Cable Television Franchise Award Act of 1984, effective March 14, 1985 (D.C. Law 5-163; D.C. Official Code § 34-1213.1 note).

"(4) 'Franchise Extension Agreement' means the agreement between the District of Columbia and Comcast Cablevision of the District, L.L.C., approved by the Approval of the Extension of the Term of District Cablevision Limited Partnership's Franchise Act of 2000, effective September 16, 2000 (D.C. Law 13-153; 47 DCR 4976), setting forth the terms and conditions regarding the Franchise extension.

"Sec. 3. Approval.

"In accordance with the Cable Act, the Council grants an extension of the Franchise, the Franchise Agreement, and the Franchise Extension Agreement until March 14, 2002." = —

§ 34-1214. Amendment of franchise agreement. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 15, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(u), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(m), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1814.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For

legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1215. Franchise revocation procedure. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 16, formerly § 17, 29 DCR 2872; renumbered and amended Oct. 22, 1983, D.C. Law 5-36, § 2(w), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(n), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Section references. — This section is referred to in § 29-1127.

Prior Codifications. — 1981 Ed., § 43-1815.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1216. Franchise renewal procedure. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 17, formerly § 16, 29 DCR 2872; renumbered and amended Oct. 22, 1983, D.C. Law 5-36, § 2(v), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(o), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1816.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

Mayor's Orders. — Extension of the Franchise Term of District Cablevision Limited Partnership, see Mayor's Order 2000-144, September 22, 2000 (47 DCR 8256).

Extension of the Franchise Term of District Cablevision Limited Partnership, see Mayor's Order 2000-156, October 12, 2000 (47 DCR 8682) and Mayor's Order 2000-169, November 2, 2000 (47 DCR 9536).

Extension of the Term of the Interim Open Video Systems Agreement with Starpower Communications, LLC, see Mayor's Order 2000-175, November 21, 2000 (47 DCR 9545).

Extension of the Franchise Term of District Cablevision Limited Partnership, see Mayor's Order 2001-09, January 16, 2001 (48 DCR 946).

Extension of the Franchise Term of District Cablevision Limited Partnership, see Mayor's Order 2001-10, January 17, 2001(48 DCR 947).

Extension of the Term of the Interim Open Video Systems Agreement with Starpower Communications, LLC, see Mayor's Order 2001-11, January 17, 2001 (48 DCR 948).

Extension of the Term of the Interim Open Video Systems Agreement with Starpower

Communications, LLC, see Mayor's Order 2001-25, February 14, 2001 (48 DCR 2178).

Extension of the Franchise Term of District Cablevision Limited Partnership, see Mayor's Order 2001-26, February 14, 2001 (48 DCR

§ 34-1217. Termination of franchise; forced purchase by the District. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 18, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(x), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(p), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1817.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1218. Arbitrary and capricious discontinuance of service by franchisee. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 19, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 3(6), 30 DCR 4289; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1818.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1219. Arbitration panel. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 20, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(y), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(q), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1819.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1220. Transfer of ownership to other than District. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 21, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(z), 30 DCR 4289; May 16, 1995, D.C. Law 10-255, § 37, 41 DCR 5193; Apr. 9, 1997, D.C. Law 11-210, § 2(r), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1820.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Office of Cable Television and Telecommunications Temporary Amendment Act of 1999 (D.C. Law 13-12, October 7, 1999, law notification 46 DCR 8696).

Emergency legislation. — For emergency approval of the application for the transfer of control of Tele-Communications, Inc., the parent corporation of TCI of D.C., Inc., which is the limited partner of District Cablevision Limited Partnership, to AT&T Corporation, see §§ 2-6 of the Approval of the Application for Transfer of Control of District Cablevision Limited Partnership from Tele-Communications, Inc. to AT&T Corporation Emergency Act of 1999 (D.C. Act 13-20, February 5, 1999, 46 DCR 2535).

For temporary (90-day) authorization of transfer of cable franchise control, see § 2 of the Approval of the Application for Transfer of Control of District of Cablevision Limited Partnership from Tele-Communications, Inc. to AT & T Corporation Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-60, May 10, 1999, 46 DCR 4432).

For temporary (90-day) authorization of transfer of cable franchise control, see §§ 2 through 8 of the Approval of the Application for Transfer of Control of District of Cablevision, Inc. to AT & T Corp. Emergency Act of 1999 (D.C. Act 13-209, December 8, 1999, 47 DCR 3).

For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

Editor's notes. — Sections 2 through 7 of D.C. Law 13-153 provided:

"Sec. 2. Definitions.

"For the purpose of this act, the term:

"(1) 'Cable Television Act' means the Cable Television Communications Act of 1981.

"(2) 'CFA' means the Cable Franchise agreement entered into between the District and the District Cablevision Limited Partnership, as amended September 30, 1985.

"(3) 'Council' means the Council of the District of Columbia.

"(4) 'DCI' means District Cablevision, Inc., a District of Columbia corporation.

"(5) 'DCLP' means District Cablevision-Limited Partnership, a District of Columbia limited partnership.

"(6) 'District' means the District of Columbia.

"(7) 'Franchise' means the right granted to DCLP to construct, reconstruct, operate, and maintain a cable television system in the District pursuant to the District of-Columbia Cable Television Franchise Award Act of 1984.

"(8) 'Franchisee' means DCLP.

"(9) 'Franchise Extension Agreement' means the agreement between the District and DCLP which sets forth the agreement between the parties regarding the Franchise extension, subject to Council approval.

"(10) 'OCTT' means the District of Columbia Office of Cable Television and Telecommunications, established in section 6 of the Cable Television Act.

"Sec. 3. Findings.

"The Council finds that:

"(1) DCLP currently holds a Franchise from the District, subject to the CFA, Cable Television Act, and other applicable law.

"(2) The Franchise was scheduled to expire on March 14, 2000, but was extended on an emergency basis in the Approval of the Extension of the Term of District Cablevision Limited Partnership Franchise in the District of Columbia Emergency Act of 2000.

"(3) Pursuant to the District of Columbia Cable Television Franchise Award Act of 1984, the District granted to DCI a 15-year, revocable Franchise to construct, reconstruct, operate and maintain a cable television system within the District, and incorporated the CFA within the grant of the Franchise.

"(4) Pursuant to the Cable Television Franchise Agreement Modification Act of 1985, the District amended the CFA and approved assignment of the Franchise to DCLP, of which the general partner was DCI and of which the limited partner was an affiliate of Tele-Communications, Inc.

"(5) Pursuant to the Approval of the Application for Transfer of Control of District Cablevision Limited Partnership from Tele-Communications, Inc. to AT & T Corporation Emergency Act of 1999, and the Application for Transfer of Control of District Cablevision Limited Partnership from Tele-Communications, Inc. to AT & T Corporation Temporary Act of 1999, the District approved a transfer of control of Tele-Communications, Inc., the parent corporation of TCI of D.C., Inc., which was the limited partner of DCLP, to AT & T and approved transfer of control of the Franchise to AT & T.

"(6) Pursuant to the Approval of the Application for Transfer of Control of District Cablevision, Inc. to AT & T Corp. Emergency Act of 1999, the District approved a transfer of control of DCI to AT & T.

"(7) The Council believes that it would be in the best interests of the District and District residents to extend the term of the Franchise until September 14, 2000, in order to permit the parties to negotiate a franchise renewal agreement, and to permit the Mayor, by Executive Order, to execute month-to-month extensions of the term up to an additional 6 months after September 14, 2000, as the Mayor deems necessary, in order to permit the conclusion of the franchise renewal negotiations and action by the Council on any proposed renewal of the Franchise.

"(8) On March 3, 2000, DCLP and the District entered into a Franchise Extension Agreement which set forth the terms and conditions of a Franchise extension, subject to Council approval.

"(9) Based on the promises contained in the Franchise Extension Agreement and the interests of the District and DCLP in extending the term of the Franchise in order to permit the parties to attempt to negotiate a franchise renewal agreement, OCTT has recommended that the Council approve the extension of the Franchise term.

"Sec. 4. Consideration of recommendation.

"The Council has reviewed the recommendation of OCTT.

"Sec. 5. Adoption of recommendation.

"Pursuant to authority granted under the Cable Television Act, the Council hereby adopts the recommendation of OCTT regarding the proposed Franchise extension.

"Sec. 6. Approval.

"By adoption of the recommendation, the Council hereby grants an extension of the term of the Franchise until September 14, 2000, and authorizes the Mayor to execute thereafter up to 6 one-month extensions of the term of the Franchise, as deemed necessary by the Mayor, so as to extend the Franchise to a date no later than March 14, 2001.

"Sec. 7. Interpretation.

"The Council, as the franchising authority intends that this act constitutes a final decision of the franchising authority for purposes of section 617 of the Communications Act of 1934 and the consent of the Council required under the Cable Television Act."

Sections 2 through 8 of D.C. Law 13-202 provided:

"Sec. 2. Definitions.

"For the purposes of this act, the term:

"(1) 'AT & T' means AT & T Corp., a New York corporation.

"(2) 'Cable Television Act' means the Cable Television Communications Act of 1981.

"(3) 'CFA' means the Cable Franchise Agreement, dated September 30, 1985, as amended, between the District of Columbia and District Cablevision Limited Partnership.

"(4) 'Change of Control Agreement' means the contractual agreement between the District of Columbia, AT & T, TCI, and DCLP, which sets forth the details regarding the change in control.

"(5) 'Chairman' means the Chairman of the Council of the District of Columbia.

"(6) 'Committee' means the Committee on Economic Development of the Council of the District of Columbia.

"(7) 'Council' means the Council of the District of Columbia.

"(8) 'DCLP' means District Cablevision Limited Partnership, a District of Columbia limited partnership.

"(9) 'District' means the District of Columbia.

"(10) 'Franchisee' means District Cablevision Limited Partnership, or DCLP.

"(11) 'OCTI' means the Office of Cable Television and Telecommunications.

"(12) 'Proposed Transaction' means the Agreement and Plan of Merger, dated as of June 23, 1998, between AT & T, TCI, and Italy Merger Corp., under which Italy Merger Corp.

will be merged with and into TCI, with TCI surviving as a subsidiary of AT & T.

"(13) 'System' means the cable system of the Franchisee currently serving the District of Columbia.

"(14) 'TCI' means Tele-Communications, Inc., a Delaware corporation.

"(15) 'Transfer Application' means Federal Communications Commission Form 394.

"Sec. 3. Findings.

"The Council finds that:

"(1) DCLP currently holds a cable franchise from the District subject to the Cable Television Act and other applicable laws, and subject to the terms and conditions of the CFA.

"(2) AT & T, TCI, and Italy Merger Corp., a Delaware corporation and wholly-owned subsidiary of AT & T, have entered into the Proposed Transaction.

"(3) Currently, TCI is the parent corporation of TCI of D.C., Inc., which is the limited partner of, and exercises day-to-day control over, the Franchisee.

"(4) On September 8, 1998, the Franchisee filed materials, including a Transfer Application, with the District seeking consent to the Proposed Transaction, by which AT & T would become the parent corporation of TCI of D.C., Inc., and gain control over the Franchisee and of the System.

"(5) Pursuant to section 21 of the Cable Television Communications Act of 198 1, and section 3.11.03 of the CFA, the Council may approve or deny the transfer of control over DCLP.

"(6) Pursuant to section 617 of the Communications Act of 1934, the Council has 120 days following the filing of the Transfer Application to approve or disapprove the Transfer Application or the Transfer Application will be deemed granted, unless the District, DCLP, and AT & T agree to an extension of time.

"(7) DCLP and AT & T granted the District an extension from January 5, 1999, until February 8, 1999, to reach a final decision on whether to approve or deny the Proposed Transaction.

"(8) Pursuant to section 3.11.05 of the CFA, OCTT has reviewed the Transfer Application and supplemental information submitted by DCLP/TCI and AT & T.

"(9) The Committee held a public hearing on the Transfer Application on November 16, 1998. The hearing was continued on November 30, 1998, to allow the Committee to accept further comments.

"(10) DCLP, TCI, and AT & T have entered into the Change of Control Agreement in consideration of the District's consent to the Proposed Transaction and to establish the parties' rights in connection with the transfer.

"(11) AT & T has committed to adhere to the terms of the CFA in the Change of Control Agreement.

"Sec. 4. Consideration of recommendation.

"The Council has received and reviewed the recommendation of OCTT and has received and considered comments, evidence, and information from the public and interested parties, including DCLP/TCl and AT & T.

"Sec. 5. Adoption of recommendation.

"The Council hereby adopts the recommendation of OCTT regarding the proposed Transfer of Control of TCI to AT & T.

"Sec. 6. Approval.

"By adoption of the recommendation, pursuant to section 5, the Council approves the Transfer Application.

"Sec. 7. Interpretation.

"The Council, as the franchising authority, intends this act to constitute a 'final decision' of the franchising authority for purposes of section 617 of the Communications Act of 1934, and the 'consent of the Council' required by the Cable Television Act.

"Sec. 8. Authorization to sign.

"This act authorizes the Chairman to sign, on behalf of the Council, the Change of Control Agreement, which is approved by this act."

§ 34-1221. Transfer of ownership to District. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 22, 29 DCR 2872; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1821.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1222. District's right to assign. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 23, 29 DCR 2872; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1822.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1223. Franchisee's obligation as trustee. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 24, 29 DCR 2872; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1823.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1224. Annual franchise fee; quarterly and annual reports; audit; financial statement. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 25, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(aa), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(s), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Section references. — This section is referred to in § 34-1207.01.

Prior Codifications. — 1981 Ed., § 43-1824.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1225. Insurance; performance bond; indemnification of District. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 26, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(aa), 30 DCR 4289; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1825.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1226. Rates and service offerings. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 27, 29 DCR 2872; renumbered and amended Oct. 22, 1983, D.C. Law 5-36, § 2(bb), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(t), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1826.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1226.01. Subscriber fees. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 27a, formerly § 27, 29 DCR 2872; renumbered and amended Oct. 22, 1983, D.C. Law 5-36, § 2(bb), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, §§ 2(u), 3(e), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1826.1.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1226.02. Rate regulation. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 27b, formerly § 27, 29 DCR 2872; renumbered and amended Oct. 22, 1983, D.C. Law 5-36, § 2(bb), 30 DCR 4289; Apr. 26, 1994, D.C. Law 10-101, § 2, 41 DCR 1000; Apr. 9, 1997, D.C. Law 11-210, § 2(v), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1826.2.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 10-101. — Law 10-101, the "Cable Television Communications Act of 1981 Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-356, which was referred to the Committee on Public Services and Youth Affairs. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-189 and transmitted to both Houses of Congress for its review. D.C. Law 10-101 became effective on April 26, 1994.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1227. Inspection of books and records; filing and posting certain enumerated documents. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 28, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(cc), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(w), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1827.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1228. Capability requirements. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 29, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 3(7), 30 DCR 4289; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1828.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1229. Public Access Corporation. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 30, 29 DCR 2872; renumbered and amended Oct. 22, 1983, D.C. Law 5-36, § 2(dd), 30 DCR 4289; Mar. 16, 1985, D.C. Law 5-195, § 2, 32 DCR 1022; Aug. 1, 1985, D.C. Law 6-15, § 2, 32 DCR 3570; Mar. 17, 1993, D.C. Law 9-213, § 2, 40 DCR 25; Oct. 3, 2001, D.C. Law 14-28, § 1402, 48 DCR 6981; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1829.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 802(b) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, 42 DCR 1652).

Emergency legislation. — For temporary (90 day) amendment of section, see § 1302 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 5-195. — Law 5-195 was introduced in Council and assigned Bill No. 5-514, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Approved without the signature of the Mayor on January 11, 1985, it was assigned Act No. 5-262 and transmitted to both Houses of Congress for review.

Legislative history of Law 6-15. — Law 6-15 was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-213. — Law 9-213, the "Cable Television Communications Act of 1981 Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-479, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on November 4, 1992, and December 1, 1992, respectively. Signed by the Mayor on December 21, 1992, it was assigned Act No. 9-342 and transmitted to both Houses of Congress for its review. D.C. Law 9-213 became effective on March 17, 1993.

Legislative history of Law 14-28. — Law 14-28, the "Fiscal Year 2002 Budget Support Act of 2001", was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1229.01. Public access. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 30a, formerly § 30, 29 DCR 2872; renumbered and amended Oct. 22, 1983, D.C. Law 5-36, § 2(dd), 30 DCR 4289; Nov. 15, 1983, D.C. Law 5-42, § 4(c), 30 DCR 4999; Apr. 9, 1997, D.C. Law 11-210, § 2(x), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1829.1.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable

Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 5-42. — For legislative history of D.C. Law 5-42, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1230. Operational requirements. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 31, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(ee), 30 DCR 4289; Mar. 21, 1987, D.C. Law 6-216, § 13(h), 34 DCR 1072; Apr. 9, 1997, D.C. Law 11-210, § 2(y), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1830.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 6-216. — Law 6-216 was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 18, 1986 and December 16, 1986, respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1231. Performance monitoring. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 32, 29 DCR 2872; Apr. 9, 1997, D.C. Law 11-210, § 3(f), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1831.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1232. Maintenance service; complaint procedure; interruption of service; customer service standards. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 33, 29 DCR 2872; Oct. 22, 1983, D.C. Law

5-36, § 2(gg), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(z), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1832.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 23-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1233. Installation of facilities. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 34, 29 DCR 2872; Sept. 17, 1982, D.C. Law 4-150, § 403, 29 DCR 3377; Oct. 22, 1983, D.C. Law 5-36, § 2(hh), 30 DCR 4289; Feb. 28, 1987, D.C. Law 6-206, § 2, 34 DCR 675; Apr. 9, 1997, D.C. Law 11-210, § 2(aa), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1833.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 4-150. — Law 4-150 was introduced in Council and assigned Bill No. 4-360, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 22, 1982 and July 6, 1982, respectively. Signed by the Mayor on July 21, 1982, it was assigned Act No. 4-221 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 6-206. — Law 6-206 was introduced in Council and assigned Bill No. 6-519, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on November 18, 1986 and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-266 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1234. Construction and service schedules; maps. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 35, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(ii), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(bb), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1834.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable

Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1235. Violations subject to penalties. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 36, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 3(8), 30 DCR 4289; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1835.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1236. Limits on franchisee's recourse. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 37, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(jj), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(cc), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1836.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1237. Compliance not excused by failure to enforce franchise. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 38, 29 DCR 2872; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1837.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1238. Effect of specific time for performance. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 39, 29 DCR 2872; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1838.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1239. Rights reserved to District. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 40, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2 (kk), 30 DCR 4289; April 9, 1997, D.C. Law 11-210, § 2 (dd), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1839.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1240. Franchisee not to discriminate. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 41, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(ll), 30 DCR 4289; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1840.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 23-1202.01.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1241. Affirmative action requirements. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 42(a)-(h), 29 DCR 2872; Oct. 22, 1983, D.C.

Law 5-36, § 2(mm), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(ee), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1841.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1242. Minority contracting requirements. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 43, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(nn), 30 DCR 4289; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1842.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1243. Local hiring and subcontracting policy. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 44, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(oo), 30 DCR 4289; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1843.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1244. Restrictive easement; unlawful attachment for access or use. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 45, 29 DCR 2872; Mar. 14, 1985, D.C. Law

5-159, § 16(b), 32 DCR 30; Apr. 9, 1997, D.C. Law 11-210, § 2(ff), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1844.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-159. — For legislative history of D.C. Law 5-159, see Historical and Statutory Notes following § 34-1203.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1244.01. Landlord-tenant relationship. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 45a, as added Oct. 22, 1983, D.C. Law 5-36, § 2(pp), 30 DCR 4289; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1844.1.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

Short title. — Short title: The first section of D.C. Law 5-36 provided: "That this act may be cited as the 'Cable Television Communications Act of 1981 Clarification Amendment Act of 1983'."

§ 34-1245. Protection of privacy. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 46, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(qq), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(gg), 43 DCR 4702; Apr. 3, 2001, D.C. Law 13-269, § 110, 48 DCR 1270; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1845.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 8 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 8 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 108 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 108 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary amendment of section, see § 8 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 8 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 8 of the Child

Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 8 of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary amendment of § 43-1845 [1981 Ed.], see § 8 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary (90-day) amendment of section, see § 108 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 108 of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 108 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90-day) amendment of section, see § 108 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 110 of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 34-1131.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1246. Costs. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 47, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(rr), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(hh), 43 DCR 4702; Apr. 9, 1997, D.C. Law 11-255, § 46(b), 44 DCR 1271; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1846.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1247. Obscenity laws. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 48, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2§§ , 30 DCR 4289; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1847.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1248. "Rent-a-citizen" practice discouraged. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 49, 29 DCR 2872; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1848.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1248.01. Obtaining services without compensation unlawful. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 49A, as added Mar. 16, 1988, D.C. Law 7-93, § 3(b), 35 DCR 721; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334)

Prior Codifications. — 1981 Ed., § 43-1848.1.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 7-93. — Law 7-93 was introduced in Council and assigned Bill No. 7-324, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 8, 1987 and January 5, 1988, respectively. Signed by the Mayor on January 25, 1988, it was assigned Act No. 7-135 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

Short title. — Short title: The first section of D.C. Law 7-93 provided: "That this act may be cited as the 'Cable Television Communications Act of 1981 Amendment Act of 1987'."

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 7-93, the Cable Television Communications Act of 1981 Amendment Act of 1987, see Mayor's Order 90-137, October 17, 1990.

§ 34-1249. Severability. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 50, 29 DCR 2872; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

§ 34-1250. Civil penalties; prosecutions. [Repealed].

Repealed.

(Aug. 21, 1982, D.C. Law 4-142, § 51, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(tt), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(ii), 43 DCR 4702; Oct. 9, 2002, D.C. Law 14-193, § 3, 49 DCR 7334.)

Prior Codifications. — 1981 Ed., § 43-1849.

Emergency legislation. — For temporary (90 day) repeal of section, see § 3 of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

For temporary (90 day) addition of §§ 34-1251.01 to 34-1264.05, see § 2(b) of Cable Television Reform Emergency Amendment Act of 2002 (D.C. Act 14-409, July 15, 2002, 49 DCR 7280).

Legislative history of Law 4-142. — For legislative history of D.C. Law 4-142, see Historical and Statutory Notes following § 34-1201.

Legislative history of Law 5-36. — For legislative history of D.C. Law 5-36, see Historical and Statutory Notes following § 34-1202.01.

Legislative history of Law 11-210. — For legislative history of D.C. Law 11-210, see Historical and Statutory Notes following § 34-1202.

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1201.

Subchapter II. Cable Television Reform, 2002.

PART A.

GENERAL PROVISIONS.

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§ 34-1251.01. Short title.

This subchapter may be cited as the Cable Television Reform Act of 2002.

(Aug. 21, 1982, D.C. Law 4-142, § 101, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — Law 14-193, the "Cable Television Reform Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-480, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on June 18, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 15, 2002, it was assigned Act No. 14-412 and transmitted to both Houses of Congress for its review. D.C. Law 14-193 became effective on October 9, 2002.

§ 34-1251.02. Findings and purposes.

(a) The Council of the District of Columbia finds that:

(1) The rates, services, and operation of cable services and systems in the District affect the public interest;

(2) Further development of cable television may result in greater benefits for District residents;

(3) Cable television and cable technology play an essential role in the District's basic infrastructure;

(4) Cable systems occupy and extensively use scarce and valuable public rights-of-way in a manner reserved primarily for those who provide essential service to the public;

(5) Cable systems have the capacity to provide, in addition to entertainment and information services to District residents, a variety of broadband interactive communications services to individuals, the District government, and other institutions; and

(6) It is, and should be, the policy of the District of Columbia to provide fair regulation of cable service providers in the public interest.

(b) The purposes of this subchapter are:

(1) To ensure that any authority granted to provide cable service is exercised in the public interest;

(2) To establish the procedures for granting, renewing, transferring, and revoking authority to provide cable services;

(3) To establish baseline standards for the operation of cable service providers in the District;

(4) To establish a framework for the ongoing regulation of cable service providers and for the promulgation of rules and regulations governing the provision of cable service;

(5) To encourage the optimum development of the economic, educational, and community service potentials of cable services and cable systems;

(6) To promote just and reasonable rates and charges for cable services without discrimination, undue preferences or advantages, or unfair or destructive competitive practices;

(7) To promote harmonious relationships between cable operators and their customers;

(8) To create and maintain an economic and regulatory environment that promotes competition in the cable television industry in the District; and

(9) To attract the deployment and maintenance of advanced cable services in the District.

(Aug. 21, 1982, D.C. Law 4-142, § 102, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1251.03. Definitions.

For the purposes of this subchapter, the term:

(1) "Advisory Committee" means the Cable Television Advisory Committee established by § 34-1253.01.

(2) "Affiliate" means, when used in relation to any person, another person who owns or controls, or is owned or controlled by, or is under common ownership or control with such person.

(3) "Basic service" means the lowest tier of cable service that includes the retransmission of local broadcast signals.

(4) "Cable service" means:

(A) The one-way transmission to subscribers of video programming or other programming service; and

(B) The subscriber interaction, if any, which is required for the selection or use of video programming or other programming service.

(5) "Cable facility" means antennae, transmitters, poles, wires, cables, conduits, amplifiers, instruments, and any other equipment used to provide cable service in the District, including any appliances used in connection with, or appurtenant to, any item listed in this paragraph.

(6) "Cable operator" means a person or group of persons:

(A) Who provides cable service over a cable system or over an open video system and directly or through one or more affiliates owns a significant interest in such cable system or open video system; or

(B) Who controls or is responsible for, through any arrangement, the management and operation of a cable system or open video system.

(7) "Cable system" means the cable facilities, including the set of closed transmission paths and associated signal generation, reception, and control equipment, that are used to provide cable service to multiple subscribers within the District. The term cable system shall not include:

(A) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(B) A facility that serves subscribers without using any public rights-of-way;

(C) A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, approved June 19, 1934 (48 Stat. 1070; 47 U.S.C. § 201 et seq.) ("Communications Act of 1934") provided, that such a facility shall be considered a cable system to the extent it is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(D) An open video system that is certified by the FCC pursuant to section 653 of the federal cable act (47 U.S.C. § 573); provided, that the term cable system shall be construed to include an open video system under the circumstances set forth in § 34-1251.04; or

(E) A facility of any electric utility used solely for operating its electric utility systems.

(8) "Control" means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments, or negative control. A rebuttable presumption of the existence of control shall arise from the beneficial ownership, directly or

indirectly, by a person, or group of persons acting in concert, of more than 20% of a person.

(9) "Converter" means an electronic device that may serve as an interface between a cable signal transmission and a subscriber's television receiver or other terminal equipment, and which may perform a variety of functions, including signal security, descrambling, electronic polling, frequency conversion, and channel selection.

(10) "Corporation Counsel" means the District of Columbia Corporation Counsel.

(11) "District" means the government of the District of Columbia or the geographic location of the District of Columbia, as applicable.

(12) "Educational channel" means a specifically designated channel on a cable system set aside for use by a public or private school, scientific or educational institution, or consortium of schools or institutions.

(13) "Executive Director" means the Director of the Office of Cable Television and Telecommunications.

(14) "Fair market value" means the price that a willing buyer would pay to a willing seller for a cable system as a going concern in an arm's-length transaction, but with no value allocated to the franchise itself.

(15) "Federal cable act" means the Cable Communications Policy Act of 1984, approved October 30, 1984 (98 Stat. 2779; 47 U.S.C. §§ 521-573).

(16) "FCC" means the Federal Communications Commission or its successor agency.

(17) "Franchise" means an authorization, or renewal of an authorization, issued by the Council, to construct or operate a cable system.

(18) "Franchise agreement" means a contract entered into pursuant to this chapter, between the District and a cable operator that sets forth, subject to this chapter and other laws, the terms and conditions under which a franchise shall or may be exercised.

(19) "Gross revenues" means all revenues received by a cable operator, or an affiliate of a cable operator, before payment of expenses and other costs, from the operation or use of its cable system or open video system, including revenues derived from cable services including cable modem service, interactive services, the sale or lease of subscriber equipment, installation and other service fees, the sale of advertising time (and related services), earnings from home shopping channels, and any item defined as gross revenue in a franchise agreement.

(20) "Government channel" means a specifically designated channel on a cable system set aside for use by the District government.

(21) "Installation" means the connection of cable service to a subscriber's television receiver or other terminal equipment.

(22) "Institutional network" or "I-Net" means a one-way and two-way network with upstream and downstream capacity, and including dedicated, high speed data, video, television, audio communications and telephony facilities, designed and constructed to connect District government buildings and facilities, and other buildings and facilities designated or authorized by the District.

(23) "Office" means the Office of Cable Television and Telecommunications established by § 34-1252.01.

(24) "Open video system" means the cable facilities, including the set of closed transmission paths and associated signal generation, reception, and control equipment, that are designed to provide cable service to multiple subscribers within the District, and which the FCC, in accordance with section 653 of the federal cable act (47 U.S.C. § 573), has certified as compliant with Title VI of the federal cable act and its rules.

(25) "Other programming service" means a service other than cable service that a cable operator makes available to all subscribers generally.

(26) "PEG channels" means channel capacity designated for public access channels, educational channels, and government channels, and the facilities and equipment for the use of the channels.

(27) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, or any other legal entity, excluding the government of the District of Columbia and its agencies.

(28) "Public access channel" means a channel on a cable system that is reserved for noncommercial use by members of the public on a nondiscriminatory basis.

(29) "Public rights-of-way" means the surface, the airspace above the surface, and the area below the surface of any street, road, avenue, highway, parkway, concourse, boulevard, park, public space, bridge, viaduct, tunnel, or any other property to which the District has title, easement, or jurisdiction.

(30) "Subscriber" means a person who:

(A) Lawfully receives cable service provided by a cable operator by means of or in connection with its cable system or open video system, whether or not a fee is paid for such cable service; and

(B) Does not further distribute the cable service.

(31) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(Aug. 21, 1982, D.C. Law 4-142, § 103, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

References in text. — Title VI of the federal cable act, referred to in par. (24), is Title VI of the Cable Communications Policy Act of 1984, Pub. L. 98-549, Oct. 30, 1984, 98 Stat. 2779, classified to 47 U.S.C. § 521 et seq.

§ 34-1251.04. Applicability to open video systems.

(a) Except as otherwise provided in this subchapter, this subchapter shall apply to an open video system to the extent permitted by federal law. In applying the provisions of this subchapter to an open video system, the term "cable system" shall be construed to include an open video system.

(b) An open video system operator shall not operate in the District without first:

(1) Receiving a franchise from the Council; and

(2) Entering into:

(A) A franchise agreement pursuant to this chapter; or

(B) An open video system agreement; provided, that the open video system agreement shall contain the minimum requirements set forth in § 34-1254.05; provided further, that the open video system agreement shall be negotiated with the Office and transmitted to the Council for approval by act.

(c) In lieu of the franchise fee required by § 34-1256.01, the operator of an open video system shall pay to the District a fee of 5% of the gross revenues of the operator.

(d) Any person who provides cable service over the open video system of another person and who assesses charges to subscribers that are not received by the open video system operator shall pay a fee to the District in an amount equal to 5% of the person's gross revenues. The operator of the open video system shall collect the fee from the person and shall remit the fee to the District. If the open video system operator fails to collect or remit the fee, the operator shall be directly liable to the District for payment of the uncollected or unremitted fee.

(e) An open video system operator shall be subject to all requirements of District law regarding the authorization to use or occupy the public rights-of-way, and the approval by the Federal Communications Commission of an open video system operator's certification pursuant to section 653 of the federal cable act (47 U.S.C. § 573) shall not confer upon the operator any authority to use or occupy the public rights-of-way that the operator does not otherwise possess.

(f) Notwithstanding anything to the contrary, if a cable operator, its parent, affiliate, or subsidiary elects to offer to subscribers video programming services through an open video system, the cable operator shall remain subject to all the terms and conditions of a franchise granted pursuant to this chapter.

(Aug. 21, 1982, D.C. Law 4-142, § 104, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

PART B.

OFFICE OF CABLE TELEVISION AND TELECOMMUNICATIONS.

§ 34-1252.01. Establishment of the Office of Cable Television and Telecommunications; executive director; general counsel.

(a) There is established within the executive branch, as a subordinate agency, the Office of Cable Television and Telecommunications. The Office shall be responsible for regulating cable service, cable service providers, and the cable television industry, protecting and promoting the public interest in cable

service, and executing the policies and provisions of the cable television laws and regulations of the District.

(b) The Office shall be administered by an Executive Director, who shall be appointed by the Mayor and shall be subject to confirmation by the Council pursuant to § 1-523.01. Notwithstanding any other provision of law, the Executive Director shall become a bona fide resident of the District within 180 days after the effective date of confirmation by the Council and shall remain a District resident for the duration of the appointment. Failure to become a District resident or to maintain District residency shall result in forfeiture of the appointment. The Executive Director shall not have, or have had within 2 years preceding his or her nomination, any ownership or business interest of over 5% in, or a substantial business affiliation with, any cable operator in the District.

(c) The duties of the Executive Director shall include the general administration of the Office, the preparation of the budget, hiring of staff, maintaining records, administering and enforcing the provisions of this chapter and regulations promulgated pursuant to this chapter, and such other duties required by law.

(d) The Executive Director shall establish an Office of the General Counsel within the Office. The Office of the General Counsel shall be headed by a General Counsel appointed by the Executive Director with the approval of the Corporation Counsel. The General Counsel, with the consent of the Executive Director and the approval of the Corporation Counsel, may appoint Assistant General Counsels.

(e) The Executive Director may appoint a Director of Programming to be the station manager of the government channels.

(Aug. 21, 1982, D.C. Law 4-142, § 201, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1252.02. Powers and responsibilities of the Office of Cable Television and Telecommunications.

In addition to the general authority of the Office set forth in § 34-1252.01(a), the Office shall have the powers and responsibilities to:

(1) Promulgate rules or regulations to administer or enforce this chapter;

(2) Issue guidelines, instructions, application forms, and other documents that are necessary or useful to the administration or enforcement of this chapter;

(3) Prescribe fees in accordance with this chapter;

(4) Receive and review applications to provide cable service in the District;

(5) Negotiate, on behalf of the District, franchise agreements and other agreements necessary for the implementation of this chapter;

(6) Draft and adopt a model franchise agreement, which shall be updated

as needed to reflect changes in cable law, technology, standards and changes in the cable-related needs and interests of the District;

(7) Monitor and enforce cable operator compliance with the provisions of this chapter, regulations promulgated pursuant to this chapter, franchise agreements, and any other agreements entered into with the District pursuant to this chapter or pursuant to a franchise agreement;

(8) Coordinate, manage, and oversee the use of, and the programming on, all government channels;

(8A) Negotiate use or license agreements, with or without monetary considerations, for the use of production studios and equipment owned or controlled by the Office; provided, the Office shall:

(A) Require users of the studios or equipment to maintain comprehensive insurance for the duration of the use and include the Office as an additional insured; and

(B) Implement an overall fee structure that compensates the Office for any additional costs the Office occurs in implementing the use program;

(9) Make reasonable requests of a cable operator in furtherance of this chapter, any regulations promulgated pursuant to this chapter, or the general public interest in cable service and cable systems;

(10) Establish reasonable conditions and restrictions on cable operators necessary or useful to protect and promote the public interest in cable television or to protect the public health, safety, or welfare;

(11) Intervene in, and resolve, disagreements between cable operators and subscribers or other lawful users of cable service;

(12) Ensure that cable operators provide uniform, nondiscriminatory access to their cable system and cable services;

(13) Ensure that the District maintains an environment conducive to the competitive operation of multiple cable operators;

(14) Educate the public on the benefits and uses of cable television;

(15) Conduct periodic evaluations of the cable system to ensure compliance with this chapter and with regulations promulgated pursuant to this chapter, or to ensure the public health, safety, or welfare;

(16) Solicit and accept funds from nonprofit and government entities to underwrite specifically designated programming on government channels; provided, that the Office shall first establish policies to preclude commercialization on behalf of the underwriter or grantors, the broadcasting of comparative product descriptions, claims of product performances or superiority, price information, or any control over programming content by the grantor or the underwriter; provided further, that the solicitation and acceptance of funds shall be conducted in accordance with Mayor's Order 2002-2, issued January 11, 2002 (49 DCR 900), or its successors;

(17) Provide the Advisory Committee with notice of legislative hearings and other similar activities of the Office, as well as reports and other information and materials essential to the Advisory Committee's fulfillment of its responsibilities under this chapter;

(18) Allocate and assign public, educational, and government channels and negotiate and enter into operating agreements for the use of the channels,

subject to the provisions set forth in § 34-1253.02 and part H of this subchapter;

(19) Recommend to the Council amendments to this chapter, a franchise agreement, or any other agreements related to cable service or a cable system; and

(20) Submit an annual report to the Council which shall include an account of franchise agreement fees received and distributed, a review of any plans submitted during the year by the cable operator for development of new services, and a report on cable operator compliance with this chapter, regulations, and any franchise agreement.

(Aug. 21, 1982, D.C. Law 4-142, § 202, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334; Mar. 17, 2005, D.C. Law 15-241, § 2, 51 DCR 11227.)

Effect of amendments. — D.C. Law 15-241 added par. (8A).

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

Legislative history of Law 15-241. — Law 15-241, the "Television Production Studios and Equipment Use Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-686, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on October 5, 2004, and November 9, 2004, respectively. Signed by the Mayor on November 30, 2004, it was assigned Act No. 15-598 and transmitted to both Houses of Congress for its review. D.C. Law 15-241 became effective on March 16, 2005.

Mayor's Orders. — Policy for the Production of Video Programming by District Government Agencies, see Mayor's Order 2005-162, October 24, 2005 (53 DCR 337).

§ 34-1252.03. Cable Television Special Account.

(a) There is hereby established within the General Fund of the District, a Cable Television Special Account, to which shall be credited all revenues owed and accruing to the District from the establishment, regulation, and operation of a cable system. The Cable Television Special Account shall be nonlapsing. Revenues deposited into the special account shall not revert to the General Fund at the end of any fiscal year or at any other time. All special account deposits shall be secured in a manner consistent with deposits of revenues by the District.

(b) Revenues deposited into the special account shall be continually available to the Office for the uses and purposes set forth in this chapter, subject to authorization in an appropriations chapter.

(c) The Executive Director shall administer the special account and receive all payments required by this chapter.

(d) Deposits into the special account shall include:

(1) Fees and penalties collected pursuant to this chapter, to regulations promulgated pursuant to this chapter, or to a franchise agreement, including franchise fees, application fees, and transfer fees;

(2) Collections by the District on indemnities, insurance, and bonds pursuant to this chapter, to regulations promulgated pursuant to this chapter, or to a franchise agreement;

(3) PEG funding provided by a cable operator pursuant to a cable franchise agreement, which shall be used exclusively for PEG purposes; and

(4) Other payments authorized by this chapter, by regulations promul-

gated under this chapter, or by an agreement entered into under the authority of this chapter.

(Aug. 21, 1982, D.C. Law 4-142, § 203, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

PART C.

OTHER CABLE ENTITIES.

§ 34-1253.01. Cable Television Advisory Committee.

(a) There is established a Cable Television Advisory Committee to assist and advise the Mayor and the Council regarding the design, regulation, and programming of cable systems in the District.

(b) The Advisory Committee shall consist of 13 members as follows:

(1) Two members who shall represent the Council, who shall be comprised of:

(A) One member to be designated by the Chairman of the Council; and

(B) One member to be designated by the chairperson of the Council committee with oversight over the Office;

(2) Eight members, to be appointed by the Mayor, who shall be comprised of:

(A) One member who shall be an Advisory Neighborhood Commissioner;

(B) Two members who shall be District residents with extensive knowledge of cable television;

(C) One member who shall be a District resident with expert knowledge of the telecommunications industry;

(D) One member who shall be an engineer with technical knowledge of cable television and telecommunications;

(E) One member who shall be a senior citizen and resident of the District;

(F) One member who shall represent the Office of the Deputy Mayor for Planning and Economic Development;

(G) One member who shall represent the Department of Transportation;

(3) One member who shall represent the Consortium of Universities to be selected by the Consortium from among its members;

(4) One member who shall represent the District of Columbia Public School Board of Education, to be selected by the President of the Board from among the members of the Board; and

(5) One member who shall represent the Public Access Corporation to be selected by the Chairman of the Board of Directors of the Public Access Corporation from among the members of the Board of Directors.

(c) The Advisory Committee shall:

(1) Advise the Mayor, the Council, and the Office in the general oversight of the cable television industry;

(2) Assess the cable programming and technology needs and interests of District residents;

(3) Recommend changes to District law, regulations, or policy regarding cable television; and

(4) Meet at least on a quarterly basis to familiarize its members with, among other things, current cable industry technology and trends.

(d) The members of the Advisory Committee shall be appointed or designated for terms of 4 years; provided, that the members of the Advisory Committee serving on the day prior to October 9, 2002 shall continue in office under the following schedule:

(1) The terms of the members appointed under subsection (b)(1)(A), (b)(2)(A), (b)(2)(D), (b)(2)(F), (b)(3), (b)(5) of this section and the member appointed earlier under subsection (b)(2)(B) of this section shall expire 2 years after October 9, 2002; and

(2) The terms of the members appointed under subsection (b)(1)(B), (b)(2)(C), (b)(2)(E), (b)(2)(G), (b)(4) of this section, and the member appointed later under subsection (b)(2)(B) of this section shall expire 4 years after October 9, 2002.

(Aug. 21, 1982, D.C. Law 4-142, § 301, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1253.02. Public Access Corporation.

(a)(1) There shall be established, pursuant to the requirements of this chapter and in accordance with Chapters 1, 2, and 4 of Title 29, a nonprofit Public Access Corporation ("Corporation") in the District for the purpose of facilitating and governing nondiscriminatory use by the public of those specifically designated and reserved noncommercial public access channels of a cable system.

(2) The Corporation shall have jurisdiction over the use of all public access channels and all matters related to the governance, management, time, equipment, facilities, and other services related to the public access channels.

(3) The Corporation shall be responsible for all resources and assets dedicated to the Corporation under this chapter, and any franchise agreement, or open video system agreement.

(b)(1) The Corporation shall have no less than 3 categories of members, including:

(A) A 13-member Board of Directors;

(B) A 15-member Board of Advisors; and

(C) Associate members.

(2) The names of the members of the Corporation shall be public information.

(c) The Board of Directors shall be the governing body of the Corporation. The bylaws of the Corporation shall provide that 2 members of the Board shall always be persons nominated by the Mayor and confirmed by the Council and that 2 members of the Board shall always be persons nominated by the chairperson of the Council committee having jurisdiction over cable television and confirmed by the Council. The chairperson and the remaining members of the Board shall be elected in accordance with the bylaws of the Corporation.

(d) The Board of Advisors shall advise the Board of Directors and shall have the authority or responsibilities that the bylaws of the Corporation confer and as the Board of Directors may from time to time determine. Each member of the Board of Advisors shall be a resident of the District of Columbia. To the extent possible, the membership of the Board of Advisors shall include representatives of public interest organizations, civil rights groups, the health and arts communities, labor organizations, business groups, consumers, educators, religious leaders, minorities, women, gays and lesbians, persons with disabilities, and child advocates.

(e) Any person nominated by the Mayor or the Council to the Board of Directors or the Board of Advisors shall be a District resident and shall not be an employee of the District, an employee or owner of a cable operator or any of its contractors.

(f) Any person nominated by the Mayor or the Council to the Board of Director or the Board of Advisors shall, to the extent possible, have knowledge of areas that include telecommunications law, television programming, corporate or foundation management, public relations, fund raising, and career development training.

(g) Neither members of the Board of Directors nor members of the Board of Advisors shall be compensated for the performance of their duties as members of these boards, except that they may be reimbursed for expenses incurred in the performance of their duties as the Corporation shall determine.

(h) The articles of incorporation or the bylaws of the Public Access Corporation shall reflect and ensure that the statutory mandates and legislative intent of the Council shall be protected and promoted by the Corporation in the issuance of regulations guaranteeing nondiscriminatory use of the public access channels; in the development of opportunities within the community-at-large for training and experience in the field of telecommunications; and in permitting any resident of the District qualified to use the public access facilities to become a member of the Public Access Corporation, with voting rights equal to those of other members. The articles shall also provide for these members to elect members of the Board.

(i) The bylaws of the Corporation shall include a requirement that an annual report of all the Corporation's activities, including a financial audit, be submitted to the Council for its information within 120 days of the end of each fiscal year of the Corporation.

(j) The bylaws of the Corporation shall include rules for procurement and personnel policies.

(k) The bylaws of the Corporation shall include a requirement that the Corporation submit to the Mayor the budget of the Corporation for its next

fiscal year, approved by the Board, for inclusion in the annual budget that the Mayor is required to submit to the Council pursuant to § 1-204.42. The Corporation shall submit to the Mayor annually the budget of the Public Access Corporation for its next fiscal year, approved by the Board, for inclusion in the annual budget that the Mayor is required to submit to the Council pursuant to § 1-204.42.

(l) The Corporation shall establish its bank account in a financial institution located in the District.

(m) The Corporation's management and use of public access channels shall not duplicate programming or services that the District may provide on government channels.

(n) The Corporation may solicit any monies, equipment, and services provided under and in accordance with the terms of an agreement ratified by the District as a part of a grant of franchise for a cable system; and may receive monies, equipment, and services from other sources, including grants from the District, the federal government, private foundations, businesses, organizations, individuals, membership dues, and donations. Any monies, equipment, and services received pursuant to this subsection shall be utilized in accordance with the bylaws of the Corporation, and in a manner consistent with the purposes and limitations of this chapter.

(o) All assets of the Corporation, including all facilities and monies dedicated to public access use by the District and the franchise agreement or open video system agreement, shall be deemed assets held by the Corporation in trust for the benefit of the citizens of the District for the purpose of developing and implementing the use and programming of public access channels. In the event of voluntary or involuntary dissolution of the Corporation, all assets of the Corporation shall revert to the District. In addition to all other lawful grounds, the Corporation may be dissolved involuntarily by a decree of the court in an action instituted by the Mayor, on the Mayor's own initiative or at the request of the Council, in the name of the District when it is proven by a preponderance of the evidence that the Corporation has continued to exceed, abuse, or fail to fulfill the powers or purposes set forth in this chapter and the Corporation's articles, has continued to exceed or abuse its bylaws, or has breached and continues to breach its fiduciary obligations to the citizens of the District. Any involuntary dissolution shall be undertaken pursuant to the notice and remedy provisions of § 29-301.53.

(Aug. 21, 1982, D.C. Law 4-142, § 302, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334; Apr. 24, 2007, D.C. Law 16-305, § 49, 53 DCR 6198; July 2, 2011, D.C. Law 18-378, § 3(z), 58 DCR 1720.)

Effect of amendments. — D.C. Law 16-305, in subsec. (d), substituted "persons with disabilities" for "handicapped persons".

D.C. Law 18-378, in subsec. (a)(1), substituted "Chapters 1, 2, and 4 of Title 29" for "Chapter 3 of Title 29".

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

Legislative history of Law 16-305. — Law 16-305, the "People First Respectful Language Modernization Act of 2006", was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it

was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

Legislative history of Law 18-378. — Law 18-378, the "District of Columbia Official Code Title 29 (Business Organizations) Enactment Act of 2009", was introduced in Council and assigned Bill No. 18-500, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 27, 2011, it was assigned Act No. 18-724 and transmitted to both Houses of Congress for its review. D.C. Law 18-378 became effective on July 2, 2011.

§ 34-1253.03. Public Service Commission regulation of the use of existing utility companies' rights-of-way.

(a) The Public Service Commission shall regulate the rates, terms, and conditions for cable operators' use of existing utility company rights-of-way located within the District, including the use of existing utility poles and underground conduits in accordance with federal law and regulations, and shall ensure that all rates, terms, and conditions are just and reasonable.

(b) In regulating rates, terms, and conditions under this section, the Public Service Commission shall consider the interests of both cable service subscribers and utility consumers.

(c) The Public Service Commission shall resolve disagreements among cable operators and public utilities, including the use of public rights-of-way by a cable operator to install and maintain the cable operator's cable system.

(Aug. 21, 1982, D.C. Law 4-142, § 303, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

PART D.

FRANCHISING AND RE-FRANCHISING PROCESS.

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§ 34-1254.01. Franchise and franchise agreement required.

(a) The Council may grant one or more franchises to provide cable service over, on, under, or within the public rights-of-way.

(b) No person may construct or operate a cable system over, on, under, or within a public right-of-way without first obtaining a franchise under this chapter.

(c) No person may exercise the authority granted by a franchise without first having entered into a franchise agreement with the District pursuant to this chapter.

(d) A franchise granted pursuant to this chapter shall:

(1) Authorize the use of the public rights-of-way for installing, on poles or underground, cables, wires, lines, optical fibers, underground conduits, ducts,

conductors, amplifiers, vaults, and other facilities necessary and pertinent to operate a cable system to serve subscribers within the District; provided:

(A) The authority to use the public rights-of-way shall be subject to the permitting and other regulatory authority of the District;

(B) The authority to use the public rights-of-way shall be subordinate, without limitation, to the District's use and any prior lawful occupancy of the public rights-of-way;

(2) Be subject to prior revocation pursuant to this chapter and the franchise agreement;

(3) Be subject to any terms, conditions, or obligations set forth in this chapter, the franchise, the franchise agreement, and other applicable law and regulation;

(4) Become void upon the failure to comply with any material term of the franchise, franchise agreement, or this chapter, as determined by the Office; and

(5) Constitute an obligation to provide the cable services regulated by this chapter, the franchise agreement, and any other applicable law or regulation.

(e) A franchise granted pursuant to this chapter shall not:

(1) Limit the District's right to grant a franchise to other persons to provide cable service within the same or other areas of the District at any time;

(2) Waive the requirement of the cable operator to obtain, or be deemed, approval of:

(A) Any other permit or authorization to transact or carry on business in the District;

(B) Any permit or authorization to operate on, over, under, or within public streets or property, including street cut permits; or

(C) Any permit or authorization to occupy any property of the District government or private property to which access is not specifically granted by the franchise, including permits or authorization to place devices in, on, over, or under poles, conduits, structures, or railroad easements.

(Aug. 21, 1982, D.C. Law 4-142, § 401, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Temporary Addition of Section. — Section 2 of D.C. Law 18-253 added a provision to read as follows:

"Sec. 2. (a) The Council approves the transfer from RCN Corporation to Yankee Cable Acquisition, LLC, ('Yankee Cable') of the control of Starpower Communications, LLC, ('Franchisee'), its cable franchise in the District, and its cable system serving the District granted in accordance with the Cable Television Reform Amendment Act of 2002, effective October 9, 2002 (D.C. Law 14-193; D.C. Official Code § 34-1251.01 et seq.), and the franchise agreement between the Franchisee and the District dated June 28, 2005.

"(b) The Council's approval of this transfer is subject to the following conditions:

"(1) That on or before July 31, 2010, the District, the Franchisee, Yankee Cable, and RCN Telecom Services, LLC enter into an agreement substantially in the form of the document titled 'Transfer Agreement;'

"(2) That the transfer is consummated on or before October 31, 2010; and

"(3) That the transfer is consummated on terms and conditions identical in all material respects to those described in the Transfer Agreement.

"(c) If any of the conditions specified in subsection (b) of this section or in the transfer agreement are not satisfied, the Council's approval of the transfer is null and void.

"(d) The Mayor may execute the transfer agreement on behalf of the District."

Section 4(b) of D.C. Law 18-253 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary

(90 day) amendment of section, see § 2 of the Comcast Cable Television Franchise Agreement Modification Emergency Act of 2006 (D.C. Act 16-364, April 26, 2006, 53 DCR 3630).

For temporary (90 day) addition of section, see § 2 of Approval of the Transfer of Control of Starpower Communications, LLC, and its Cable Franchise and Cable System to Yankee Cable Acquisition, LLC Emergency Act of 2010 (D.C. Act 18-488, July 20, 2010, 57 DCR

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

Editor's notes. — Section 2 of D.C. Law 15-255 provided: "Sec. 2. Grant of franchise. Pursuant to the Cable Television Communications Act of 1981, effective October 9, 2002 (D.C. Law 14-193; D.C. Official Code § 34-1251.01 et seq.) ("Cable Act"), the application of Starpower Communications, LLC for an open video system franchise is hereby approved, and Starpower Communications, LLC is granted a 5-year, non-exclusive, revocable open video system ("OVS") franchise to provide cable television service in the District of Columbia. The OVS franchise is subject to the provisions of the Cable Act and the terms and conditions of the OVS franchise agreement approved by section 3."

Sections 2 to 7 of D.C. Law 17-349 granted a cable television franchise to Verizon Washington, DC Inc., subject to certain exemptions from law, and approved a cable television system franchise agreement between the District of Columbia and Verizon Washington, DC Inc.

§ 34-1254.02. Application for an initial franchise.

(a) An application for the grant of an initial franchise may be filed pursuant to a request for proposals issued by the District or on an unsolicited basis.

(b) The application shall be filed with the Office and shall be on a form prescribed by the Mayor. The application shall contain the following information:

(1) The names and addresses of persons authorized to act on behalf of the applicant with regard to the application;

(2) The name and address of the applicant and identification of the ownership and control of the applicant, including the names and addresses of all persons with more than 5% (non-voting or voting) ownership interest in the applicant and its affiliates, all officers and directors of the applicant and its affiliates, general partners or managing members as applicable, and all other business affiliations and cable system ownership interests of each such person;

(3) An executive summary demonstrating the applicant's technical ability to construct and operate a state-of-the-art cable system, including identification of key personnel;

(4) A description of the applicant's legal qualifications to construct and operate the proposed cable system;

(5) A detailed description of the physical facility proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities.

(6) A demonstration of financial qualifications to complete the construction and operation of the proposed cable system;

(7) A description of prior experience in cable ownership, construction, and operation, and identification of the communities in which the applicant or any of its principals, including persons named pursuant to paragraph (2) of this subsection, have, or have had, a cable franchise or any interest therein;

(8) Where applicable, a description of the construction of the proposed system, including an estimate of plant mileage and its location, the proposed construction schedule and map, and a description, where appropriate, of how services will be converted from existing facilities to new facilities;

(9) A demonstration of how the applicant will meet the cable-related

needs and interests of District residents, including public, educational, and government access channel capacity and facilities and financial or capital contribution to an institutional network;

(10) An affidavit or a declaration by the applicant or authorized officer certifying the truth and accuracy of the information in the application and certifying that the application is consistent with all the requirements of federal and District law;

(11) For informational purposes, the proposed rate structure, including projected charges for each service tier, installation, converters, and other equipment or services, and the ownership interest of the applicant or any of its affiliates in any proposed program services to be delivered over the cable system; and

(12) Any other information required by the Office by regulation.

(c) The Office may establish, by regulation, fees for filing and processing an application under this section.

(Aug. 21, 1982, D.C. Law 4-142, § 402, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1254.03. Evaluation of an initial franchise application.

(a) Within 45 days after receiving an application under § 34-1254.02, the Office shall certify the application as complete or shall transmit to the applicant a description of missing information and the time by which the missing information must be provided.

(b) Upon certifying the application as complete, the Office shall have published in the District of Columbia Register a Notice of the Filing of an Application for a Cable Franchise, which shall contain the name of the applicant, the nature of the application, and a description of the procedures under this chapter.

(c) Within 120 days after certifying an application as complete, the Office shall determine whether the applicant has the ability and commitment to adequately provide cable service in the District and to meet the cable-related needs and interests of the District and of District residents. In making this determination, the Office may procure the assistance of qualified technical, financial, and legal consultants.

(d) In determining the ability and commitment of an applicant to adequately provide cable service in the District and to meet the cable-related needs and interests of the District and of District residents, the Office shall consider the following:

(1) Whether the proposed plans for the cable system are feasible and reasonable, considering the applicant's legal, financial, and technical resources and abilities and any other relevant factors;

(2) Whether the applicant has the ability, willingness, and commitment to

construct, operate, and maintain a state-of-the-art cable system in the best interests of the District and of District residents;

(3) Whether the applicant has the ability to adapt to and implement new technologies, services, and programming;

(4) Whether the proposed cable system will serve the public interest and meet the cable-related needs of the District;

(5) Whether the applicant has had a previous franchise application denied by the District or any other franchising authority;

(6) Whether the applicant has filed materially misleading information in its application or intentionally withheld information that the applicant is required to provide;

(7) Whether the applicant has demonstrated a willingness and the ability to comply with the requirements of this chapter and any regulations promulgated under this chapter; and

(8) Any other relevant information.

(e) In making a determination under this section, the Office may hold a public hearing to receive testimony on the applicant and the application. The Office shall have a notice of the hearing published in the District of Columbia Register and shall hold the hearing on no less than 15 days notice. The Office may consider multiple applications at a hearing.

(f) In making a determination under this section, the Office may accept written and oral testimony and any other materials relevant to the application or its determination.

(g) If the Office determines that an applicant does not possess the ability and commitment to adequately provide cable service in the District and meet the cable-related needs and interests of the District and District residents, the Office shall give the applicant additional time, not to exceed 90 days, and shall in writing indicate the deficiencies in the application and recommend how the applicant can correct the deficiencies. If the applicant, after the additional time, remains unable to meet the standards of this section, the application shall be denied. The Office shall transmit to the Council a notice of denial of application and shall set forth the reasons for the denial.

(Oct. 9, 2002, D.C. Law 14-193, § 2, 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1254.04. Negotiation of an initial franchise agreement.

(a) If the Office determines under § 34-1254.03 that an applicant has the ability and commitment to adequately provide cable service in the District and to meet the cable-related needs and interests of the District and of District residents, the Office shall commence the negotiation of the terms of a franchise agreement between the District and the applicant.

(b) The Office and the applicant shall agree on the terms of a proposed franchise agreement within one year after the commencement of the negotiations under subsection (a) of this section. The Office may extend the one-year

period of negotiations for up to 180 additional days, if additional time is necessary to finalize the terms of the proposed franchise agreement and there is good cause for not having finalized the agreement within the one-year period.

(Aug. 21, 1982, D.C. Law 4-142, § 404, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1254.05. Minimum contents of franchise agreement.

(a) The proposed franchise agreement shall contain the following provisions:

(1) The applicant shall construct, operate, and maintain a state-of-the-art cable system.

(2) The capacity of the cable system shall be at least 750 MHz, with both downstream and upstream capacity.

(3) The cable system shall be capable of providing Internet access services.

(4) The applicant shall pay a franchise fee of at least 5% of gross revenues.

(5) The applicant shall contribute at least 1% of gross revenues to the operations of the Public Access Corporation;

(6) The applicant shall provide at least 8 PEG channels on the analog portion of the cable system and at least 10 PEG channels on the digital portion of the cable system.

(7) The applicant shall provide at least 1% of gross revenues each year as continuing capital support for the public, educational, and government access channels.

(8) The applicant shall enter into an agreement regarding contracting with, and procuring from, local, small, and disadvantaged business enterprises.

(9) The applicant shall enter into a First Source agreement.

(10) The applicant shall provide significant financial resources or capacity or equipment to an institutional network.

(11) The construction schedule required by § 34-1257.03.

(b) The term of a franchise agreement shall not exceed 15 years in the case of an initial franchise and shall not exceed 10 years in the case of a renewed franchise.

(c) The proposed franchise agreement shall include procedures for amending the franchise agreement, including the District's right to amend the franchise agreement in order to take advantage of advancements in technology.

(d) The proposed franchise agreement shall also cover matters regarding system construction, operation, and maintenance; indemnity, insurance and bonding requirements; reports and records; default and remedies; notices; and all terms and conditions related to the provision of cable service the Office deems necessary or appropriate.

(Aug. 21, 1982, D.C. Law 4-142, § 405, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1254.06. Procedure for Council review and approval of initial franchise.

(a) If the Office and the applicant agree on the terms of a proposed franchise agreement under § 34-1254.05, the Office shall submit to the Mayor and the Council a Recommendation for the Approval of a Franchise Application consisting of the franchise application, the proposed franchise agreement, and a summary of factors supporting the recommendation.

(b) If at the end of the initial or extended negotiation period under § 34-1254.04, the Office and the applicant are unable to agree on the terms of a proposed franchise agreement, the Office shall submit to the Mayor and the Council a Recommendation for the Denial of a Franchise Application consisting of the franchise application and a summary of the factors supporting the recommendation. The summary shall describe specific deficiencies of the application and a general description of why the application should not be granted.

(c) The Council may, by act, grant a franchise and approve the franchise agreement, with or without conditions or modifications which may override any provisions of the proposed franchise agreement, deny a franchise or reject the proposed franchise agreement and remand the proposed franchise agreement to the Office with recommendations to renegotiate any of the provisions of the agreement and submit a revised agreement to the Council, or deny a franchise or reject the proposed franchise agreement.

(d) Each applicant to whom the District grants a franchise shall pay to the District, within 30 days after the franchise is granted, a franchise award fee to be set in the act granting the franchise. The payment shall be nonrefundable. An applicant's failure to pay the franchise award fee within the 30-day period shall make the franchise and franchise agreement void.

(Aug. 21, 1982, D.C. Law 4-142, § 406, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1254.07. Franchise renewal; commencement under federal cable act.

(a) The Office may commence a franchise renewal proceeding under section 626(a) of the federal cable act (47 U.S.C. § 546(a)).

(b)(1) Upon commencement of a franchise renewal proceeding under this section, the Office shall commence the following:

(A) A formal assessment of community cable-related needs, both current and future;

(B) A formal assessment of the cable operator's compliance with this chapter, the franchise, and the franchise agreement over the course of the franchise; and

(C) A formal assessment of the technical aspects of the cable system.

(2) The Office shall complete the assessments under this section prior to taking action under subsection (e) of this section.

(c) If the Office commences a proceeding under section 626(a) of the federal cable act (47 U.S.C. § 546(a)), the cable operator shall submit a proposal for renewal of the franchise within such time, and with such information, as the Office shall establish by regulation.

(d) The Office shall provide public notice of the proposal through publication of a Notice of Cable Franchise Renewal Proposal in the District of Columbia Register.

(e) After the submission of a completed renewal proposal the Office shall:

(1) Within 90 days, provide to the Council a written recommendation that the franchise should be renewed, along with a proposed franchise agreement which shall meet the standards of § 34-1254.05; or

(2) Within 120 days, issue a preliminary assessment that the franchise should not be renewed and commence an administrative proceeding consistent with section 626(c) of the federal cable act (47 U.S.C. § 546(c)). After the completion of the administrative proceeding, the Office shall transmit to the Council a written proposed decision granting or denying the proposal for renewal based upon the record of the proceeding and stating the reasons for the proposed decision. If the proposed decision is to deny the renewal, the Office shall provide a detailed explanation of the proposed denial's [*sic*] consistent with federal law.

(Aug. 21, 1982, D.C. Law 4-142, § 407, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1254.08. Franchise review prior to expiration.

(a) If the Office does not commence a renewal proceeding under § 34-1254.07, the Office shall commence a franchise review proceeding no later than 24 months before the expiration of the franchise.

(b) The Office shall commence the proceeding by having published in the District of Columbia Register a Notice of Commencement of Cable Franchise Review Prior to Expiration, which shall state the name of the cable operator, the nature of the proceedings, and the relevant procedures under this chapter and federal law.

(c) Within 120 days after commencement of the review proceeding under this section, the Office shall hold a public hearing, on at least 30 days notice published in the District of Columbia Register. The public hearing shall be held to receive testimony on at least the following issues:

(1) The current and future cable-related community needs and interests of the District and of District residents;

(2) The performance of the cable operator under the franchise during the then current franchise term; and

(3) The quality of services provided by the cable operator.

(d)(1) Within 120 days after the commencement of the proceeding, the Office shall commence the following:

(A) A formal assessment of community cable-related needs, both current and future;

(B) A formal assessment of the cable operator's compliance with this chapter, the franchise, and the franchise agreement over the course of the franchise; and

(C) A formal assessment of the technical aspects of the cable system.

(2) The Office shall complete the assessments under this section before submitting a proposed franchise agreement under subsection (h) of this section.

(e) As part of the review proceeding, the Office shall commence, at least 18 months before the expiration of the franchise, the negotiation of the terms of a new franchise agreement between the District and the applicant.

(f) The Office shall use its best efforts to reach agreement with the cable operator on the terms of a proposed franchise agreement within one year after the commencement of the negotiations under subsection (e) of this section. The Office may extend the one-year period or until the expiration date of the franchise, if additional time is necessary to finalize the terms of the proposed franchise agreement and there is good cause for not having finalized the agreement within the one-year period.

(g) The proposed franchise agreement shall contain the provisions set forth in § 34-1254.05.

(h) If the Office and the applicant agree on the terms of a proposed franchise agreement under this section, the Office shall submit to the Mayor and the Council a Recommendation for the Approval of a Cable Television Franchise consisting of the proposed franchise agreement and a summary of factors supporting the recommendation.

(i) If the Office determines that there is a basis for denial of a franchise under federal law, and determines that the franchise should be denied, the Office shall submit to the Mayor and the Council a Recommendation for the Denial of a Franchise, including a summary of the factors supporting the recommendation and a detailed explanation of the proposed denial's consistency with federal law.

(j) After a proposed franchise agreement is submitted to the Council under subsection (h) of this section, the Council may, by act, grant a franchise and approve the franchise agreement, with or without conditions or modifications which may override any provisions of the proposed franchise agreement, deny a franchise or reject the proposed franchise agreement and remand the proposed franchise agreement to the Office with recommendations to renegotiate any of the provisions of the agreement and submit a revised agreement to the Council, or deny a franchise or reject the proposed franchise agreement.

(k) Each applicant to whom the District grants a franchise renewal shall pay to the District, within 30 days after the franchise is granted, a franchise award fee to be set in the act granting the franchise. The payment shall be nonrefundable. A cable operator's failure to pay the franchise award fee within the 30-day period shall make the franchise and franchise agreement void.

(Aug. 21, 1982, D.C. Law 4-142, § 408, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

PART E.

TRANSFER OF REVOCATION OF FRANCHISE.

§ 34-1255.01. Approval required for transfer of franchise to a person other than the District.

(a) Except for conveyances of real or personal property in the ordinary course of the operation of a cable system, neither a franchise, nor a cable operator, nor any rights or obligations of a cable operator in a cable system or pursuant to a franchise agreement, nor a cable system, nor any assets of a cable system, nor the persons holding control of the cable operator, franchise, cable system, or the assets of the cable system, shall be transferred, nor shall title therein, either legal or equitable, or any right or interest therein, pass to or vest in any person, either by act of the cable operator, by act of any persons holding control of or any interest in the cable operator, the cable system, the assets of the cable system, or the franchise, by operation of law, or otherwise, without the prior consent of the Council.

(b) No person who has an ownership interest exceeding 20% (for voting interest) or 50% (for non-voting interest) in a franchise, cable operator, cable system, the assets of a cable system, the persons holding control of such cable operator, franchise, cable system, or the assets of a cable system shall transfer the interest so that the person's ownership interest shall be less than 20% (for voting interest) or 50% (for non-voting interest) without the prior consent of the Council. No person shall purchase or otherwise acquire an ownership interest exceeding 20% (for voting or non-voting interest) in a franchise, cable operator, cable system, any assets of a cable system, the persons holding control of such cable operator, franchise, cable system, or the assets of a cable system without the prior consent of the Council.

(c) No change in control of a franchise, cable operator, cable system, any assets of a cable system, the persons holding control of such franchise, cable operator, cable system, or the assets of a cable system shall occur by act of the cable operator, by act of any persons holding control of, or any interest in, the franchise, cable operator, cable system, or the assets of a cable system, or by operation of law or otherwise without the prior consent of the Council.

(d) Nothing in this section shall be construed as suggesting that any other event which could result in a change of ownership or control, regardless of the manner in which such ownership or control is evidenced (such as, for example, stock, bonds, debt instruments, or other indicia of ownership or control), does not require the consent of the Council, if such change would in fact result in a change in control.

(e) If a transfer is not made according to the procedures set forth in this chapter and the franchise agreement, the District may take legal or equitable action to set aside, annul, revoke, or cancel:

(1) The franchise;

(2) The transfer of a franchise, cable operator, the rights and obligations of a cable operator in a cable system or pursuant to the franchise agreement, a cable system, any assets of a cable system, or the persons holding control of such franchise, cable operator, cable system, or assets of a cable system; or

(3) The transfer of an ownership interest in a franchise, cable operator, the rights and obligations of a cable operator in a cable system or pursuant to the franchise agreement, a cable system, any assets of a cable system, or the persons holding control of such franchise, cable operator, cable system, or assets of a cable system.

(Aug. 21, 1982, D.C. Law 4-142, § 501, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1255.02. Procedure for transfer of franchise to a person other than the District.

(a) At least 180 days before the proposed consummation of a transfer, a petition for franchise transfer shall be filed with the Office. The petition shall include:

(1) A completed FCC Form 394, or any successor thereto;

(2) All information required to be filed with the FCC and the District pursuant to FCC regulations;

(3) Complete information on the proposed transfer, including details on the legal, financial, and technical qualifications of the transferee; and

(4) Any other information required by the Office or the franchise agreement.

(b) Within 30 days after receiving a petition under this section, the Office shall certify the petition as complete or shall transmit to the applicant a description of necessary information and the time by which the necessary information shall be provided.

(c) Within 75 days after certifying a petition as complete, the Office shall transmit to the Council a written recommendation to approve, approve with conditions, or deny the petition.

(d) The Office may charge a fee for reviewing and processing a transfer petition. The fee may include charges for the procurement of technical and

legal consultants to advise the District regarding the transfer. The amount of the fee may be set forth in the applicable franchise agreement.

(e) The Council may approve a transfer upon such terms and conditions as it deems necessary or proper.

(f) Notwithstanding the approval of a transfer under this section, the parties to the transfer shall comply with any provisions regarding a transfer set forth in the franchise agreement or established by the Office.

(g) The approval of a transfer by the Council in one instance shall not render as unnecessary the approval of a subsequent transfer, and shall not constitute a waiver or release of the rights of the District under this chapter or under the franchise agreement, whether arising before or after the transfer.

(Aug. 21, 1982, D.C. Law 4-142, § 502, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1255.03. Mandatory transfer of franchise to the District; general requirement.

(a) Upon payment of the purchase price by the District, the cable operator shall immediately transfer to the District possession and title to all facilities and property, real and personal, related to its cable system, free from any and all liens and encumbrances that the District has not agreed to assume in lieu of some portion of the purchase price.

(b) The District may assign its right and power under subsection (a) of this section to a person who shall assume the rights and obligations of the franchise and franchise agreement.

(Aug. 21, 1982, D.C. Law 4-142, § 503, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Temporary legislation. — Section 2 of D.C. Law 16-158 provided as follows: "Sec. 503a. Baseball programming.

"(a) The Council finds that it is in the public interest that all of the baseball games of Baseball Expos, LP, trading as the Washington Nationals, be broadcast.

"(b) The Council directs that each cable operator broadcast all of the baseball games of Baseball Expos, LP, trading as the Washington Nationals, or any assignee or successor ("Washington Nationals").

"(c) If a cable operator is not broadcasting all of the baseball games of the Washington Nationals as of the effective date of this section, the cable operator shall enter into good faith negotiations with the District within 5 days to modify its franchise agreement to comply with subsection (b) of this section."

Section 4(b) of D.C. Law 16-158 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2 of Washington Nationals on T.V. Emergency Amendment Act of 2006 (D.C. Act 16-388, May 23, 2006, 53 DCR 4426).

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1255.04. Revocation of franchise; mandatory transfer to the District.

(a) The Council shall have the right to revoke a franchise, or accelerate the

term of a franchise, for cause. The procedures for revocation or acceleration may be set forth in the franchise agreement.

(b) If at any time during the term of the franchise, the Council determines that the cable operator has materially breached the terms and conditions imposed by this chapter, the franchise, or the franchise agreement, and the cable operator has failed to cure the breach after due notice and opportunity to cure the breach, the Council may accelerate the term of the franchise or the franchise agreement, revoke the franchise, terminate the franchise agreement, authorize the District to purchase the assets of the cable system at a price not to exceed an equitable price, or select another person to purchase the assets of the cable system at a price not to exceed an equitable price. The franchise agreement may set forth the procedures by which the District may take action in the event of a material breach of this chapter, the franchise, or the franchise agreement and may define specific circumstances which constitute a material breach. Nothing in this subsection shall be construed to abridge the Council's authority to exercise its emergency legislative powers under appropriate circumstances.

(c) If the Council authorizes the District to exercise its option to purchase the assets of the franchise's cable system at a price not to exceed equitable price, it shall give the cable operator written notice of its intent to do so. The cable operator shall, within 7 days of receipt of the notice, enter into negotiations with the District for the purpose of consummating the transaction at the earliest possible date. The District shall have the right and power to assign its purchase rights to another person selected by the Council following the procedures and standards in this chapter used to approve an initial franchise application.

(d) Any sale or transfer of a cable system shall comply with section 627 of the federal cable act [47 U.S.C. § 547].

(Aug. 21, 1982, D.C. Law 4-142, § 504, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

References in text. — Section 627 of the federal cable act is classified to 47 U.S.C. § 547.

§ 34-1255.05. Transfer or purchase of franchise after denial of renewal.

Except if there is a pending appeal, or the decision is stayed by a judicial or administrative review, upon a decision by the Council to deny a renewal, the Council may, on the expiration date of the franchise, either authorize the District to purchase the assets of the cable operator's cable system at a price not to exceed fair market value with no value allocated to the franchise itself, or the Council may select another person, after a public hearing, and cause that person to purchase the assets at a price not to exceed fair market value.

(Aug. 21, 1982, D.C. Law 4-142, § 505, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1255.06. Cable operator as trustee.

After termination or revocation of a franchise, and until such time as the cable operator transfers its cable system to the District or to another person pursuant to this chapter or until such other time as established by the Council, the cable operator shall be a trustee in interest for the District or its successor, and shall continue to operate the cable system under the terms and conditions of this chapter, the franchise, and the franchise agreement. During the trustee period, the cable operator shall not sell any of the cable system assets nor shall the cable operator make any physical, material, administrative, or operational change that would tend to degrade the quality of service to subscribers, decrease income, or materially increase expenses, without the express written permission of the District. The District may seek legal and equitable relief to enforce the provisions of this subsection.

(Aug. 21, 1982, D.C. Law 4-142, § 506, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1255.07. Arbitration.

(a) If the Council authorizes the District to purchase a cable system at a fair market value under § 34-1255.05 or purchase the cable system at an equitable price under § 34-1255.04(b), and the District and the cable operator cannot agree upon a price, the final price shall be determined by an arbitration panel.

(b) The arbitration panel shall consist of 3 members, selected as follows:

(1) One member shall be selected by the Council;

(2) One member shall be selected by the cable operator; and

(3) One member shall be selected by the Council and the cable operator acting jointly; provided, that if the Council and the cable operator fail to agree on a member, the Council or cable operator may apply to the American Arbitration Association and the American Arbitration Association shall select the member.

(c) The member selected under subsection (b)(3) of this section shall be the presiding officer of the arbitration panel, absent majority agreement to the contrary.

(d) The determination of the majority of the 3-member arbitration panel shall be binding on the parties.

(e) The cable operator shall bear all expenses regarding the arbitration.

(Aug. 21, 1982, D.C. Law 4-142, § 507, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

PART F.

REQUIRED PAYMENTS; INSURANCE AND INDEMNIFICATION.

§ 34-1256.01. Franchise fee.

(a) A cable operator shall pay to the District a franchise fee of at least 5% of its annual gross revenues. The amount of the franchise fee shall be set forth in the franchise agreement.

(b) The franchise fee shall be paid quarterly.

(c) A cable operator shall file with the Office within 30 days after the end of each of the cable operator's fiscal quarter, a financial statement clearly showing the gross revenues received by the cable operator during the preceding quarter. Payment of the quarterly portion of the franchise agreement fee shall be payable by certified check made to the D.C. Treasurer at the time the statement is filed. A cable operator shall also file, within 120 days after the end of the cable operator's fiscal year, an annual report, prepared by a certified public accountant, showing the yearly total gross revenues.

(d) The District may audit and recalculate any amounts determined to be payable under this chapter or the franchise agreement. Any additional amount due the District based on the audit shall be paid within 30 days after the Office sends to the cable operator a written notice setting forth the amount due. The notice shall include a copy of the audit report. The cost of the audit shall be borne by the cable operator if it is determined that the cable operator's payment to the District for the preceding year is increased by more than 4%.

(e) If the cable operator does not pay the recomputed amount within the 30-day period established by subsection (c) of this section, the cable operator shall be charged from the due date at the prevailing prime rate of interest.

(f) The franchise fee shall not be deemed a tax or payment in lieu of taxes or fees of general applicability imposed by the District. No cable operator may designate the franchise fee as a tax in any communication to a subscriber or any third party.

(g) If a franchise is terminated or revoked prior to its expiration date and the District invokes its right to purchase the cable operator's cable system, the cable operator shall file with the Office, within not less than 30 days following the date that ownership and control pass to the District or its assignee, a financial statement clearly showing the gross revenues received by the cable operator since the end of the previous fiscal quarter. The cable operator shall pay the franchise fee due at the time the statement is filed.

(Aug. 21, 1982, D.C. Law 4-142, § 601, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1256.02. Security fund.

(a) Within 30 days after the approval of a franchise, a cable operator shall deposit with a bank located in the District, in an interest bearing escrow account established in the name of the District, a sum to be determined by the Office or set forth in a franchise agreement, as a security fund for the cable operator's faithful performance of all the provisions of the franchise agreement; its compliance with all orders, permits, and directions of any District agency having jurisdiction over the cable operator's acts or defaults under the franchise agreement; payment of any claims and liens due to the District by reason of the construction, operation, or maintenance of the cable system.

(b) Of the security fund, no less than 20% shall be in cash, with the balance in the form of an irrevocable, unconditional letter of credit or other instrument in a form acceptable to the Corporation Counsel. The letter of credit or other instrument shall in no event require the consent of the cable operator prior to the collection by the District of any amount covered by such letter of credit or other instrument. The cable operator shall be entitled to interest on the cash portion of the security fund at a rate equal to whatever rate the District is actually earning on the cash.

(c) The security fund, including any interest, shall become the property of the District to the extent necessary to cure outstanding violations, including outstanding liquidated damages that may be provided for in the franchise agreement, in the event that the franchise is terminated or revoked.

(d) The bond shall require 30 calendar days written notice of any cancellation to both the Office and the cable operator.

(e) Any failure by a cable operator to make deposits into or maintain the security fund as provided in this section shall be a material breach of the franchise and shall be grounds for the termination or revocation of the franchise. The procedures to follow in the event of a material breach may be set forth in the franchise agreement.

(Aug. 21, 1982, D.C. Law 4-142, § 602, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1256.03. Indemnification of the District.

(a) A cable operator shall, at its sole cost and expense, indemnify and hold harmless the District, its officers, elected officials, agents, contractors, and employees against all claims, suits, causes of action, proceedings, judgments for damage arising out of the cable system under the franchise.

(b) Failure to comply with subsection (a) of this section, or with the indemnification provisions in the franchise agreement, shall constitute a material breach of the franchise. The procedures to follow in the event of a material breach may be set forth in the franchise agreement.

(Aug. 21, 1982, D.C. Law 4-142, § 603, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1256.04. Insurance.

(a) At all times during the term of a franchise, including the time for removal of facilities, the cable operator shall hold a valid liability insurance policy and shall pay all premiums for the policy in a timely manner. The policy shall insure the District, its officers, boards, commissions, elected officials, agents, contractors, and employees against liabilities. The policy shall be issued by a company carrying a rating by Best of not less than "A" and the company shall be authorized by the District's Superintendent of Insurance to do business in the District.

(b) The amount of the liability insurance policy, and the terms of the policy, shall be established in the franchise agreement.

(c) The form of the liability insurance policy shall be acceptable to the Corporation Counsel.

(d) The policy shall require 30 calendar days written notice of any cancellation to both the Office and the cable operator. If the Office or the cable operator receives a cancellation notice, the cable operator shall obtain a new bond, meeting the requirements of this section, within 30 days after receipt of the notice by the Office or the cable operator.

(e) The cable operator shall file with the Office written evidence of payment of premiums and executed duplicate copies of the liability insurance policy.

(f) Failure to comply with the provisions of this section, or with the liability insurance provisions of the franchise agreement, shall constitute a material violation of a franchise.

(Aug. 21, 1982, D.C. Law 4-142, § 604, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1256.05. Performance bond.

(a) At all times during the term of a franchise, including the time for removal of facilities or management, the cable operator shall obtain and hold a performance bond running to the District with good and sufficient surety approved by the Office, in an amount to be determined by the Office or set forth in a franchise agreement, to ensure that the operation of the cable system continues uninterrupted in the event of a default by the cable operator.

(b) The cable operator shall make all payments associated with the bond in a timely manner.

(c) The cable operator shall file with the Office written evidence of payment of premiums and executed duplicate copies of the bond documents.

(d) The bond shall be with a surety company authorized by the District's Superintendent of Insurance to transact business in the District.

(e) The bond shall require 60 calendar days written notice of any cancellation to both the Office and the cable operator. If the Office or the cable operator

receives a cancellation notice, the cable operator shall obtain a new bond, meeting the requirements of this section, within 60 days after receipt of the notice by the Office or the cable operator.

(f) Failure to comply with the provisions of this section, or with the performance bond provisions of the franchise agreement, shall constitute a material violation of a franchise.

(Aug. 21, 1982, D.C. Law 4-142, § 605, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

PART G.

CONSTRUCTION AND OPERATION OF THE CABLE SYSTEM.

§ 34-1257.01. Jurisdictional parity.

A cable system authorized by this chapter shall have no less than the channel capacity, products, and services available from a system serving any similarly sized, or smaller, jurisdiction outside of the District, or a system owned and operated by the cable operator, its parents, affiliates, or subsidiaries outside of the District, except as otherwise set forth in a franchise agreement. In no event shall such system have a bandwidth of less than 750 MHZ. Nothing herein shall be construed to require a cable operator to employ any specific transmission technology.

(Aug. 21, 1982, D.C. Law 4-142, § 701, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1257.02. Operation and construction of system; general requirements.

(a) A cable operator shall construct, operate, and maintain the cable system subject to the supervision and regulatory oversight of the Office and in full compliance with the laws and regulations of the District and federal government, including the Electrical Code approved pursuant to Chapter 14 of Title 6; Department of Public Works Standard Specification for Highway and Structures; National Electrical Code, and National Electrical Safety Code.

(b) A cable operator shall exercise its best efforts to design, construct, operate, and maintain the system at all times so that signals carried are delivered to subscribers without material degradation in quality.

(Aug. 21, 1982, D.C. Law 4-142, § 702, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1257.03. Construction schedule.

(a) Every franchise agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the cable system. The schedule of construction, upgrade, or rebuild shall ensure that no substantial differences in the time by which service shall be available in a neighborhood shall be because of the neighborhood's relative median income, ethnicity, or racial composition.

(b) Within 90 days or at a time specified in the franchise agreement, whichever is longer, after the approval of a franchise, a cable operator shall file the documents required to obtain all necessary federal and District licenses, permits, and authorizations required for the conduct of its business, and shall submit monthly reports to the Office on its progress in this respect until all documents are obtained.

(Aug. 21, 1982, D.C. Law 4-142, § 703, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1257.04. Construction of facility.

(a) A cable operator shall complete construction of the cable system, and offer and deliver cable service in full compliance with this chapter and the franchise agreement.

(b) A cable operator shall use existing poles, conduits, and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities without the approval of the District. No location of any pole or wire-holding structure of a cable operator shall be a vested interest, and poles or structures shall be removed or modified by the cable operator at its own expense whenever the District determines that public convenience would be enhanced thereby.

(c) All transmission lines, equipment, and structures shall be so installed and located as to cause minimum interference with the rights, appearance, and reasonable convenience of property owners who adjoin on any street and at all times shall be kept and maintained in a safe, adequate, substantial condition, and in good order and repair. The cable operator shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. Any pole or other fixture placed in a public right-of-way by the cable operator shall be placed in a manner that does not interfere with the usual travel on the public right-of-way.

(d) A cable operator shall remove, replace, or modify the installation of any of its facilities as may be deemed necessary by the District to meet its proper responsibilities. Costs necessary to repair or refinish public rights-of-ways shall be borne by the cable operator.

(e) Wherever an electrical and telephone utility wiring is located underground within conduits, either at the time of initial construction or subsequent thereto, and there is adequate capacity in the existing conduits for television cable, the cable shall be located underground within the existing conduits. If there is not adequate capacity in the existing underground conduits, the District's transportation agency shall determine whether cable wiring should be located underground or overhead. Nothing in this section shall be construed to supersede any provision of existing laws or regulations with respect to prohibition of the installation of overhead wiring in certain areas of the District.

(f) Excavation work performed by a cable operator in any public rights-of-way shall be subject to all applicable laws, rules, and regulations of the District. A cable operator shall, at its own expense and in a manner approved by the District, restore to District standards and specifications, any damage or disturbance caused to public rights-of-way as a result of its operations or construction of its facilities on its behalf, and shall guarantee the restoration until the time a permanent restoration is made. The District shall perform permanent restoration, and the costs associated therewith shall be billed to the cable operator for the full width of the permanent improvement. The cable operator shall place a deposit with the District in an amount sufficient to cover the projected costs to be incurred by the District for the permanent restoration of any excavation, damage, or disturbance of the public rights-of-way.

(g) Whenever, in the case of fire or other disaster, it becomes necessary, in the judgment of the Office, the Fire Chief, or the Chief of the Metropolitan Police Department to remove or damage any of a cable operator's facilities, no charge shall be made by the cable operator against the District for restoration and repair.

(h) At the request of any person holding a valid permit issued by the District to remove a building, and upon at least 10 days notice, the cable operator shall temporarily raise, lower, or cut its wires as may be necessary to facilitate the removal. The permit holder shall pay the direct expense of the temporary changes, including standby time, and the cable operator shall have the authority to require payment in advance.

(i) A cable operator may trim trees on public property at its own expense if necessary to protect its wires and facilities, subject to the permission, supervision, and direction of the District. Trimming of trees on private property shall require written consent of the property owner.

(j) A cable operator shall not be required to obtain or pay for a permit in order to connect a drop line from a trunk or feeder cable to the premises of a subscriber or in order to install, maintain, or repair cable television equipment and facilities on the premises of a subscriber.

(Aug. 21, 1982, D.C. Law 4-142, § 704, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1257.05. Construction notice to the public.

(a) A cable operator shall notify the general public prior to commencing any proposed construction that will significantly disturb or disrupt public rights-of-way or public space, or that has the potential to present danger or affect the safety of the public generally.

(b) Except for routine maintenance or minor repair work, at least 5 days prior to commencement of work, a cable operator shall notify residents and others in the immediate vicinity of proposed construction who are most likely to be affected by the construction work either by telephone, in person, by mail, or distribution of door hangers, and shall provide written notice by first class mail to the affected Advisory Neighborhood Commission and the Advisory Neighborhood Commissioner of the affected single-member district. Publication of a notice in a local newspaper shall not be deemed adequate notice. The notice must include the name and local telephone number of the cable operator's representative who is qualified to answer questions concerning the proposed construction.

(c) In addition to the notice requirements in subsections (a) and (b) of this section, before entering any person's property for proposed construction work, a cable operator shall obtain the permission of the owner and shall contact the property owner, and the resident, in the case of a leased property, at least 2 days before entering the person's property.

(Aug. 21, 1982, D.C. Law 4-142, § 705, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1257.06. Use of cable system by the District during emergencies and disasters.

In the case of an emergency or disaster, the cable operator shall, upon request of the Mayor, the Chairman of the Council, or the Director, make available its facilities to the District for emergency use during the emergency or disaster.

(Aug. 21, 1982, D.C. Law 4-142, § 706, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

PART H.

PUBLIC, EDUCATIONAL, AND GOVERNMENT CHANNELS.

§ 34-1258.01. PEG channels; carriage requirements.

(a) A cable operator shall provide at least 8 PEG channels on the analog

portion of the cable system and at least 10 PEG channels on the digital portion of the cable system. The total capacity to be set aside for PEG channels shall be set forth in the franchise agreement.

(b) A cable operator shall carry analog PEG channels on its basic service tier, except as may be otherwise provided in the franchise agreement.

(Aug. 21, 1982, D.C. Law 4-142, § 801, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1258.02. Funding for PEG channels.

(a) A cable operator shall contribute at least 1% of its gross revenues to the operations of the Public Access Corporation.

(b) A cable operator shall provide at least 1% of its gross revenues as continuing capital support for the public, educational, and government access channels. The Public Access Corporation shall receive at least 25% of the capital support payments provided pursuant to this subsection.

(c) A cable operator may be required to provide equipment and facilities in support of PEG channels. The requirements for equipment and facilities in support of PEG channels shall be specified in a franchise agreement.

(d) A cable operator shall make equipment and production assistance available that will permit PEG channel users and the cable operator to produce programming at locations other than the studio, and the requirements for such availability and use shall be set forth in the franchise agreement. A cable operator may be required to make equipment and production assistance available to PEG channel users at its studio; provided, that the requirement for such availability and use shall be set forth in the franchise agreement. The cable operator shall provide use of the equipment, production facilities, and production assistance for PEG channel users at an amount set forth or provided for in the franchise agreement.

(Aug. 21, 1982, D.C. Law 4-142, § 802, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1258.03. Allocation of PEG channels.

(a)(1) At least 2 PEG channels on the analog tier and at least 2 PEG channels on the digital tier shall be assigned and allocated to the Public Access Corporation for use as public channels.

(2) At least one PEG channel on the analog tier shall be assigned and allocated to the University of the District of Columbia for use as an educational channel.

(3) At least one PEG channel on the analog tier shall be assigned and

allocated to the District of Columbia Public Schools for use as an educational channel.

(4) At least one PEG channel on the analog tier shall be assigned and allocated to the Council for use as a government channel.

(5) At least one PEG channel on the analog tier shall be assigned and allocated to the Mayor for use as a government channel.

(b) The Office shall allocate and assign public, educational, and government channels and negotiate and enter into operating agreements for the use of the channels; provided that:

(1) No public access channel shall be allocated or assigned to an entity other than the Public Access Corporation.

(2) No operating agreement shall be required for a channel operated by the Council, the Mayor, or the Public Access Corporation.

(3) Channels for the use of the Council or the Mayor shall not be subject to discretionary assignment or allocation by the Office and channels for such use shall be made available upon the request of the Council or the Mayor, subject to availability.

(4) The allocation and assignment of a public, educational, or government channel on the analog tier, other than an allocation and assignment to the Council or the mayor or an allocation and assignment set forth in subsection (a) of this section, shall be submitted to the Council for its review and approval through a proposed resolution transmitted by the Mayor to the Council for a 45-day period of review, excluding Saturday, Sundays, legal holidays, and days of Council recess; provided, that if the Council does not approve or disapprove the allocation and assignment by resolution within the 45-day period, the proposed resolution shall be deemed approve.

(b-1)(1) Notwithstanding any other provision of law, the PEG channels allocated to the Council under subsection (a)(4) of this section shall be under the exclusive control of the Council; provided, that, subject to subsection (b)(3) of this section, the Office shall manage the channels, pursuant to § 34-1252.02(8), as the agent of the Council; provided further, that any video recordings or other documents, media, or intangible rights created in connection with the operation of the PEG channels shall be held by the Office as a custodian on behalf of the Council.

(2) The control of the Council shall include the right to direct which proceedings of the Council, including any event conducted by or on behalf of the Council, its committees, members, or staff, whether on the PEG channel allocated to the Council or an auxiliary website from which the proceedings may be downloaded, streamed, or otherwise viewed, may be:

(A) Recorded;

(B) Broadcast; or

(C) Re-broadcast.

(3) The Secretary to the Council, as the Council's representative, shall determine the programming for the Council's PEG channels in accordance with this subsection.

(4) The Secretary to the Council may enter into a memorandum of understanding with the Office to implement this subsection.

(c) The Office shall establish, by regulation, the process for allocating PEG channels before allocating or assigning channels under this section. The regulations shall not diminish the autonomy or authority of the Public Access Corporation established by this chapter.

(Aug. 21, 1982, D.C. Law 4-142, § 803, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334; May 27, 2010, D.C. Law 18-174, § 2, 57 DCR 3179.)

Effect of amendments. — D.C. Law 18-174 added subsec. (b-1).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Washington Convention Center Authority Advisory Committee Continuity Temporary Amendment Act of 2007 (D.C. Law 18-74, January 23, 2008, law notification 55 DCR 1454).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Council Cable Autonomy and Control Emergency Amendment Act of 2009 (D.C. Act 18-142, July 18, 2009, 56 DCR 5870).

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

Legislative history of Law 18-174. — Law 18-174, the "Council Cable Autonomy and Control Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-494, which was referred to the Committee of the Whole. The bill was adopted on first and second readings on March 2, 2010, and March 16, 2010, respectively. Approved without the signature of the Mayor on April 6, 2010, it was assigned Act No. 18-371 and transmitted to both Houses of Congress for its review. D.C. Law 18-174 became effective on May 27, 2010.

PART I.

REGULATION, OVERSIGHT, AND INSPECTION OF CABLE SYSTEM AND RECORDS.

§ 34-1259.01. Right to inspection.

The cable system and all parts of the system, during both operation and construction, shall be subject to the right of inspection by the Office or its designee.

(Aug. 21, 1982, D.C. Law 4-142, § 901, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1259.02. Test and performance monitoring.

(a) Not later than 90 days after a new or substantial rebuild of a cable system, or a portion of the cable system, is completed and available for service to subscribers, or at such later time as may be set forth in a franchise agreement, a technical performance test shall be conducted by the cable operator to demonstrate full compliance with the technical standards of the FCC. The test shall be performed by, or under the supervision of, a qualified registered professional engineer or an engineer with proper training and experience. A report shall be submitted to the Office, describing test results, instrumentation, calibration, test procedures, and the qualifications of the engineer responsible for the test.

(b) System monitor test points shall be established at or near the output of

the last amplifier in the longest feeder line, at or near the trunk extremities, and at not fewer than 8 other widely scattered locations.

(c) The franchise agreement may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal.

(d) The Office may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal; provided, that a request for an additional test by the Office shall be on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and the test shall be limited to the particular matter in controversy. The Office shall endeavor to arrange a request for a test under this subsection so as to minimize hardship or inconvenience to the cable operator or subscribers.

(e) All tests performed under this section shall be conducted in conformity with Federal Communications Commission regulations and any regulations promulgated under this chapter.

(f) A copy of the annual performance test required by the Federal Communications Commission shall be simultaneously submitted to Office.

(g) The Office may employ qualified consultants to assist in the administration of this or any other section of this chapter.

(Aug. 21, 1982, D.C. Law 4-142, § 902, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1259.03. Periodic evaluations; performance hearings.

(a) At least once every 3 years following the grant of a franchise, the Office shall conduct a performance evaluation of the cable operator and the cable system. The evaluation shall include a public hearing to allow public comment on the cable operator's performance.

(b) During the evaluation process, a cable operator shall fully cooperate with the Office, and shall provide all information and documents the Office needs to reasonably perform its review, including information and documents that may be considered proprietary or confidential.

(c) If any books, records, maps, plans, or other requested documents are voluminous, or for security reasons cannot be copied and moved, then the cable operator may request that the inspection take place at another location; provided, that the cable operator shall make necessary arrangements for copying documents selected by the Office after review, and the cable operator shall pay all travel and additional copying expenses incurred by the Office in inspecting those documents or having those documents inspected by its designee.

(d) The Office may hold a hearing on the performance of a cable operator, or a specific aspect of the performance of a cable operator, at any time.

(Aug. 21, 1982, D.C. Law 4-142, § 903, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1259.04. Provision of information; retention of records.

(a) A cable operator shall take all steps necessary to ensure that it is able to provide the District all information that must be provided or may be requested under this chapter or the franchise agreement, including providing appropriate subscriber privacy notices. A cable operator shall be responsible for redacting any data that federal law prevents it from providing to the District. The District retains the right to question any such redaction and to challenge it in any forum having jurisdiction over such a challenge.

(b) A cable operator shall maintain all records required by this chapter of a franchise agreement, and all records which may be reasonably requested under this chapter or the franchise agreement, for at least 3 years.

(Aug. 21, 1982, D.C. Law 4-142, § 904, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1259.05. Inspection of records.

(a) The District shall have the right to inspect the records of a cable operator and to require a cable operator to provide copies of records that the District deems appropriate in order to monitor compliance with this chapter, the franchise agreement, or any other applicable law or regulation. Records available under this section shall include all books, receipts, maps, plans, contracts, service complaint logs, performance test results, records of requests for service, computer records, disks, or other storage material, in the possession of the cable operator or held by an affiliate, contractor, or subcontractor, or any other person holding any form of management contract for the cable system. A cable operator shall be responsible for collecting the information required and producing it at the office of the Office or at a location designated by the Office.

(b) The District shall provide a cable operator with at least 24-hours written notice, which shall include at least one business day, prior to an inspection of records under this section. The notice, which shall state the intended purpose of the inspection and intended scope of documents to be inspected, shall serve as the notice that all the above materials may be inspected. The cable operator may request, and the Office may grant, additional time to assemble and produce the requested materials.

(c) Access to records and the provision of copies of records under this section shall be available at the Office or at a location designated by the Office.

(d) Access to records and the provision of copies of records under this section shall be at the cable operator's expense.

(e) A cable operator shall maintain financial records that allow analysis and review of the operator's operations in the District.

(f) Access to a cable operator's records shall not be denied on the basis that the records contain proprietary or confidential information. The District shall have the right to determine the confidentiality or proprietary nature of a cable operator's records. All confidential information received by the District shall remain confidential insofar as permitted by law. In seeking access to, or inspecting, a cable operator's records, the District shall comply with the District's freedom of information requirements as provided in subchapter II of Chapter 5 of Title 2. The refusal by a cable operator to provide information required herein shall be grounds for the revocation of a franchise or of any other permits and licenses issued by the District.

(g) A cable operator shall maintain a file of records open to public inspection in accordance with applicable federal and District law and regulations.

(Aug. 21, 1982, D.C. Law 4-142, § 905, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1259.06. Submission of correspondence by cable operator.

A cable operator shall submit to the Office copies of all correspondence, petitions, reports, applications, and other documents between the cable operator and federal agencies having appropriate jurisdiction in matters affecting cable operation, or any District agencies within 10 days of such correspondence, petitions, reports, applications, and other documents being submitted or received by the cable operator, or within a time set forth in a franchise agreement, whichever is lesser.

(Aug. 21, 1982, D.C. Law 4-142, § 906, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1259.07. Rate and service regulation.

(a) All proposed rates and service offerings for cable service shall be specified in an appendix to the franchise agreement.

(b) A cable operator shall provide a notice of any planned change in rates or services to the Office at least 30 days before the change.

(c) The Office may regulate cable services and rates in compliance with federal law and regulations; provided, that regulations promulgated by the Office to carry out this subsection shall be transmitted to the Council for a 60-day period of review.

(Aug. 21, 1982, D.C. Law 4-142, § 907, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1259.08. Subscriber fees.

(a) The cable operator shall publish and make available to each potential subscriber a schedule of all applicable fees and charges for providing cable service and shall notify subscribers that basic cable service is available.

(b) A cable operator shall not, with regard to fees, discriminate or grant any preference or advantage to any person. Nothing in this section shall be construed to prohibit a cable operator from instituting preferential or advantageous fees for the elderly, people with disabilities, or recipients of District or federal public assistance.

(c) To the extent permitted under applicable law or regulation, a cable operator may, for promotional purposes, waive, reduce, or suspend connection or monthly service fees for specific or indeterminate periods not to exceed 6 months or for a period set forth in a franchise agreement, whichever is shorter.

(d) The cable operator shall provide a notice of any planned waiver, reduction, or suspension of connection or monthly service fees to the Office at least 30 days before the waiver, reduction, or suspension.

(Aug. 21, 1982, D.C. Law 4-142, § 908, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1259.09. Reports.

(a) Within 10 days after the submission of a report or other document to any federal or District agency or commission, or after such shorter period as may be established in a franchise agreement, the cable operator shall file a copy of the document with the Office. Documents required to be submitted under this subsection include any proof of performance tests and results, equal employment opportunity reports, and all petitions, applications, and communications of all types regarding the cable system, or a group of cable systems of which the cable operator's system is a part, submitted by the cable operator, an affiliate, or any other person on behalf of the cable operator.

(b) Each report filed by a cable operator pursuant to this chapter or the franchise agreement shall be certified by a corporate officer as accurate and complete.

(c) A cable operator shall at all times maintain the following:

(1) Records of all complaints received and all actions taken with respect to such complaints;

(2) A full and complete set of plans, records, and as-built maps showing the exact location of all system facilities and equipment installed or in use in the District, exclusive of subscriber service drops;

(3) A comprehensive record of all personnel transactions and use of contractors, subcontractors, vendors, and suppliers by race and sex;

(4) Records of outages, indicating date, time, duration, area, the subscribers affected, type of outage, and cause;

(5) Records of service requests for repair or maintenance indicating the date and time the service was requested, the date and time of acknowledgment of the request, the date and time service was scheduled (if it was scheduled), the date and time the service was provided, and, if different, the date and time the problem was resolved

(6) Records of installation, reconnection, and requests for service extension indicating the date of the request, the date of acknowledgment, and the date and time service was provided; and

(7) A file showing the cable operator's plans and timetable for new construction or the rebuild of the cable system.

(Aug. 21, 1982, D.C. Law 4-142, § 909, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

PART J.

CONSUMER PROTECTION.

§ 34-1260.01. Consumer protection.

(a) A cable operator shall comply with all federal and District customer service regulations and with all customer service standards contained in the franchise agreement.

(b) A cable operator shall maintain at least one office within the District, which shall be open and accessible to the public during normal business hours and limited evening and weekend hours, including facilities for 24-hour telephone subscriber assistance.

(Aug. 21, 1982, D.C. Law 4-142, § 1001, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1260.02. Protection of privacy.

(a) For the purposes of this section, the term:

(1) "Personally identifiable information" does not include any record of aggregate data which does not identify particular persons.

(2) "'Cable operator" includes, in addition to persons within the definition of cable operator in § 34-1251.03(7), any person who is owned or controlled by, or under common ownership or control with, a cable operator.

(b) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to

such subscriber which clearly and conspicuously informs the subscriber of the following:

(1) The nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(2) The nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(3) The period during which such information will be maintained by the cable operator;

(4) The times and place at which the subscriber may have access to such information in accordance with subsection (d) of this section; and

(5) The limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) of this section to enforce such limitations.

(c) A cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber except for the following purposes:

(1) To obtain information necessary to render a cable service or other service provided by the cable operator to the subscriber; or

(2) To detect unauthorized reception of cable communications.

(d) A cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber and shall take such actions as are necessary to prevent unauthorized access to personally identifiable information by a person other than the subscriber or cable operator, except if:

(1) The disclosure is necessary to render, or conduct a legitimate business activity directly related to, a cable service or other service provided by the cable operator to the subscriber;

(2) The disclosure is subject to subsection (h) of this section, made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed; or

(3) The disclosure is of the names and addresses of subscribers to the cable service; provided, that:

(A) The cable operator has provided the subscriber the opportunity to prohibit or limit such disclosure; and

(B) The disclosure does not reveal, directly or indirectly, the extent of any viewing or other use by the subscriber of a cable service or other service provided by the cable operator, any channel or class of channels to which the subscriber subscribes, or the nature of any transaction made by the subscriber over the cable system;

(C) The disclosure is otherwise consistent with District law and regulation.

(e) A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at

reasonable times and at a convenient place designated by the cable operator. A cable subscriber shall be provided reasonable opportunity to correct any error in the information.

(f) A cable operator shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (b) of this section or pursuant to a court order.

(g) A cable operator shall not engage in or permit the transmission of any aural, visual, or digital signal, including "polling" the channel selection from any subscriber's premises without first obtaining written permission of the subscriber. This provision is not intended to prohibit the use of transmission of signals useful only for the control or measurement of system performance.

(h) A cable operator shall not engage in or permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from subscriber's premises of 2-way services using aural, visual, or digital signals without first obtaining written permission from the subscriber.

(i) In addition to any other lawful remedy available to a cable subscriber, any person aggrieved by any act of a cable operator in violation of this section may bring a civil action in the Superior Court and the Court may award the following:

(1) Actual damages or liquidated damages computed at the rate of $100 a day for each day of violation or $ 1,000, whichever is higher;

(2) Punitive damages; and

(3) Reasonable attorneys' fees and other litigation costs reasonably incurred.

(Aug. 21, 1982, D.C. Law 4-142, § 1002, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

PART K.

COMPETITION AND CUSTOMER CHOICE.

§ 34-1261.01. Landlord-tenant relationship.

(a) No landlord of a residential property shall:

(1) Interfere with the installation, operation, upgrade, or maintenance of cable television facilities upon a property or premises, except that a landlord may require that:

(A) The installation of cable television facilities conform to those reasonable conditions and architectural controls set forth by the landlord as necessary to protect the safety, functioning, and appearance of the property or premises, and the convenience and well-being of tenants;

(B) The cable operator or the tenant or both bear the entire cost of the installation, operation, upgrade, maintenance, or removal of the facilities; or

(C) The cable operator agrees to indemnify the landlord for any damages caused by the installation, operation, upgrade, maintenance, or removal of the facilities.

(2) Demand or accept payment from any tenant or cable operator, in any form, in exchange for permitting access to a property or premises or for permitting cable television service or facilities on or within a property or premises except as provided in rules and procedures established by the Office allowing for adequate compensation.

(3) Discriminate in rental charges or otherwise between tenants who receive cable television service and those who do not.

(b) Rental agreements and leases executed before October 22, 1983, may be enforced notwithstanding this section.

(c) No cable operator shall enter into any agreement with the landlord, owners, lessees, or persons controlling or managing a building or do or permit any act that would have the effect, directly or indirectly, of diminishing, infringing upon, or interfering with the rights of any tenant or other occupant of the building to choose a cable service, Satellite Master Antenna Television, Direct Broadcast Satellite, any other video transmission system, or use or avail himself or herself to master or individual antenna equipment.

(d) In addition to any other lawful remedy available to a tenant, a person aggrieved by an act of a cable operator or a landlord in violation of this section may bring a civil action in the Superior Court and the court may award damages, punitive damages, reasonable attorneys' fees, and other litigation costs reasonably incurred.

(Aug. 21, 1982, D.C. Law 4-142, § 1101, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

CASE NOTES

In general.

Trial court in suit brought by cable television franchisee against condominium unit owners' association, which refused to allow franchisee access to its premises to wire units for cablevision, did not abuse its discretion in requiring joinder of other cable television company which had entered into contract with association to provide cablevision services to condominium complex; potential interference with contractual rights was sufficient to establish other company's interest in subject of litigation, and association might be subject to inconsistent obligations as result of the litigation. Civil Rule 19(a). District Cablevision Ltd. Pshp. v. McLean Gardens Condominium Unit Owners' Ass'n, 621 A.2d 815, 1993 D.C. App. LEXIS 71 (1993).

PART L.

EMPLOYMENT AND NON-DISCRIMINATION.

§ 34-1262.01. Prohibition of discrimination.

(a) A cable operator shall not refuse to hire or employ, discharge, or otherwise discriminate against any person for any reason provided in Unit A of Chapter 14 of Title 2.

(b) The provisions of the Human Rights Act shall apply to a cable operator.

(Aug. 21, 1982, D.C. Law 4-142, § 1201, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

References in text. — The Human Rights Act, referred to in subsec. (b), is the Human rights Act of 1977, D.C. Law 2-38, Dec. 13, 1977, 24 DCR 6038, which is classified to § 2-1401.01 et seq.

§ 34-1262.02. Affirmative action.

(a) In order to maximize opportunities for minority employment and participation in the cable television industry, each cable operator shall make a positive and good faith effort to establish employment goals and timetables designed to achieve minority representation equal to the minority population of the District by the end of the first year of the franchise and throughout the balance of the franchise term; provided, that qualified or qualifiable minority persons are available. The adoption and implementation of goals and timetables by a cable operator shall not constitute a discriminatory practice prohibited under this chapter. For the purposes of this subsection, the term "qualifiable" refers to minority persons who can be trained in accordance with the requirements of this section.

(b) Upon the grant of a franchise, the cable operator shall submit its construction and skilled trades apprenticeship-training programs to the Director of the District of Columbia Apprenticeship Council for approval and registration pursuant to § 32-1431.

(c) The cable operator shall report annually to the Office of Human Rights regarding the status of its training programs including a detailed analysis of the cable operator's efforts to achieve its goals and timetables.

(d) Failure to comply with any provision of this section shall constitute an unlawful discriminatory practice and shall subject the cable operator to fines imposed by the Office of Human Rights of not less than $1,000 for each day that the violation persists and any other penalties that may be imposed pursuant to District law or this chapter.

(Aug. 21, 1982, D.C. Law 4-142, § 1202, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1262.03. Employment of District residents.

Except as otherwise provided in a cable franchise agreement, a cable operator's employee workforce and subcontractors shall consist of not less than 51% District residents.

(Aug. 21, 1982, D.C. Law 4-142, § 1203, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

PART M.

COMPLIANCE.

§ 34-1263.01. Compliance.

(a) A cable operator shall not be excused from complying with any of the terms and conditions of this chapter or the franchise agreement, as a result of any failure of the District, upon any one or more occasions, to insist upon the cable operator's performance or to seek the cable operator's compliance with any one or more of such terms or conditions.

(b) A pending litigation or an appeal to a regulatory body or court of competent jurisdiction shall not excuse a cable operator from the performance of its obligations under this chapter or the franchise agreement unless a stay is obtained or the cable operator is otherwise excused from performance by operation of law. Failure of the cable operator to perform such obligations because of pending litigation or appeal, in the absence of a stay issued by a court of competent jurisdiction, may result in forfeiture or revocation pursuant to the provisions of this chapter or the franchise agreement.

(Aug. 21, 1982, D.C. Law 4-142, § 1301, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1263.02. Specific performance.

Whenever this chapter or the franchise agreement sets forth a time for an act to be performed by or on behalf of the cable operator, the time shall be deemed of the essence and the cable operator's failure to perform within the time provided shall, in all cases, be sufficient grounds for the District to invoke the remedies available under the terms and conditions of this chapter or the franchise agreement.

(Aug. 21, 1982, D.C. Law 4-142, § 1302, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1263.03. Willful or repeated violations.

(a) Whenever a cable operator shall willfully or repeatedly fail, refuse, or neglect to conduct or operate its cable system in accordance with the terms of this chapter or the franchise, or to comply with the conditions of the use of the public rights-of-way, or in other ways violate the terms and conditions of this chapter or a franchise agreement within the preceding 3 years, the Executive Director shall notify the cable operator in writing, setting forth the nature and facts of such violations. If within 20 business days following such written notification the cable operator has not furnished proof that corrective action has been taken or is being actively and expeditiously pursued to the satisfaction of the Executive Director, or that the alleged violation did not occur, the Executive Director, through the Mayor, shall submit a resolution for termination of the franchise to the Council.

(b) If the Council determines that the cable operator had just cause for noncompliance, the Council shall direct the cable operator to comply within such time and manner and on such terms and conditions as are reasonable, or if appropriate, waive compliance in the specific matter presented.

(c) If the Council determines that the cable operator's noncompliance was without just cause, the Council may approve the resolution to terminate the franchise.

(d) No revocation or termination shall be effective unless the Council, or a committee of the Council, shall have held a public hearing where interested parties and the public may be heard and the Council shall set forth the reasons for the termination. In the event the termination of the franchise depends upon a finding of fact, the finding of fact as made by the Council shall be deemed to be conclusive, unless modified by a court of competent jurisdiction.

(e) The cable operator shall not be declared in violation of or subject to any sanctions under this chapter in any case in which the performance of the cable operator is prevented for reasons beyond its control. A violation shall not be deemed beyond the cable operator's control if committed by a person in whom the cable operator holds a controlling interest, be it directly or indirectly.

(f) The termination of a franchise under this section shall in no way affect any of the rights of the District under the franchise or any provision of law.

(Aug. 21, 1982, D.C. Law 4-142, § 1303, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

PART N.

MISCELLANEOUS PROVISIONS.

§ 34-1264.01. Obscenity.

The cable operator and all users of the cable system shall comply with all federal laws regarding obscenity on cable television and all District laws regarding obscenity.

(Aug. 21, 1982, D.C. Law 4-142, § 1401, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1264.02. Cable theft.

(a) For the purposes of this section:

(1) "Cable service" means a cable system that has been granted a franchise to operate in the District, an Open Video System that is authorized to operate in the District, a Satellite Master Antenna Television System, Direct Broadcast Satellite, or any other video transmission system for which a person is expected to pay before receiving such transmission.

(2) "Cable operator" means a person providing cable service as defined in paragraph (1) of this subsection.

(b) Unless authorized by a cable operator, it shall be unlawful for any person to do, or aid or assist another person in doing, any of the following:

(1) Attach or affix, or cause to be attached or affixed, any equipment or device, including, but not limited to, a decoder, descrambler, converter, or modem, which allows the access to, or the use of, a cable service without payment to the cable operator. A violation of this paragraph shall be a misdemeanor punishable by a fine of up to $2500 or imprisonment of up to 6 months, or both.

(2) Receive a cable signal or obtain, intercept, or receive a service from a cable operator by any equipment or device, including, but not limited to a decoder, descrambler, converter, access code, or modem, with the intent to deprive the cable operator of compensation for the service. It shall be an affirmative defense to an offense under this paragraph that a cable operator has failed to disconnect a service at the request of a subscriber, or where the cable operator failed to disconnect service, upon a request, at the end of an occupancy and a new occupant moves in without knowledge of the existing service. A violation of this paragraph shall be a misdemeanor punishable by a fine of up to $5000 or imprisonment of up to 1 year, or both.

(3) Make or maintain either a physical, electrical, acoustical, or other connection to a cable system, or tamper, interfere with, damage, or cut any cables, wires, components, moderns, lock boxes, pedestals, or other equipment of a cable operator, with the intent to deprive a cable operator of compensation

for its service. A violation of this paragraph shall be a misdemeanor punishable by a fine of up to $5,000 or imprisonment of up to 1 year, or both.

(4) Make or maintain any modification or alteration to any device, equipment, or apparatus or remove, disconnect or sell any device, equipment, or apparatus installed by a cable operator, without the authority of the cable operator, for the purpose of intercepting, descrambling, decoding, or receiving any program or other service offered by the cable operator. A violation of this paragraph shall be a misdemeanor punishable by a fine of up to $5,000 or imprisonment of up to 1 year, or both.

(5) Make, manufacture, import into the District, assemble, transfer, distribute, promote, sell, lease, lend, offer, own, possess, or possess for sale, advertise or publish for sale or for lease any device, equipment, apparatus, or circuit board designed to intercept, decode, descramble, or otherwise make intelligible any encoded, encrypted, scrambled, or other nonstandard signal distributed by a cable operator. A violation of this paragraph shall be a misdemeanor punishable by a fine of up to $5,000 or imprisonment of up to 1 year or both.

(c) A person who commits a violation under subsection (b) of this section, for payment or offer of payment, or with the intent to profit from any consideration received or expected, shall be guilty of a felony and upon conviction shall be subject to a fine of up to $10,000 or imprisonment of up to 10 years, or both.

(d) A person convicted for the violation of any of the offenses under subsection (b) of this section 3 times within a 10-year period shall be guilty of a felony.

(e) A person may seek civil remedies, penalties, damages, or injunctions in addition to the criminal penalties provided under this section. In seeking civil penalties, damages, or injunctions, a person may use a guilty judgment or any other plea bargain agreement as evidence in support of such civil remedies, penalties, or damages.

(Aug. 21, 1982, D.C. Law 4-142, § 1402, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1264.03. Rights reserved to District.

The District expressly reserves the following rights:

(1) To exercise its governmental powers, now or hereafter, to the full extent that the powers may be vested in or granted to the District.

(2) To adopt, in addition to the provisions contained herein and in the franchise and in any existing applicable acts, additional regulations that it finds necessary in the exercise of its police power, if the regulations, by act or otherwise, shall be reasonable and not in conflict with the rights herein granted or the provisions contained in a franchise agreement.

(Aug. 21, 1982, D.C. Law 4-142, § 1403, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1264.04. Rules.

The Mayor, in accordance with the procedures of subchapter I of Chapter 5 of Title 2 shall issue rules to implement the provisions of this chapter.

(Aug. 21, 1982, D.C. Law 4-142, § 1404, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

§ 34-1264.05. Transition provisions.

(a) All appointments, rules, regulations, orders, administrative issuances, obligations, determinations, agreements, and understandings made, established, issued, promulgated, or entered into under the authority of subchapter I of this chapter [repealed], shall remain in effect until amended, modified, superseded, or repealed.

(b) The Public Access Corporation established in accordance with § 34-1229 [repealed], may continue to serve as the Public Access Corporation required by § 34-1253.02(a); provided, that the Corporation shall amend its bylaws to be consistent with the provisions of this subchapter.

(c) The funds in the special account established by § 34-1207.01 [repealed], shall be transferred to the special account established by § 34-1252.03.

(Aug. 21, 1982, D.C. Law 4-142, § 1405, as added Oct. 9, 2002, D.C. Law 14-193, § 2(b), 49 DCR 7334.)

Legislative history of Law 14-193. — For Law 14-193, see notes following § 34-1251.01.

SUBTITLE III. ELECTRICITY.

CHAPTER 13. COGENERATION FACILITIES APPROPRIATENESS STANDARDS. [REPEALED].

Sec.
34-1301 to 34-1304. [Repealed].

§ 34-1301. Findings. [Repealed].

Repealed.

(May 21, 1994, D.C. Law 10-120, § 2, 41 DCR 1648; May 9, 2000, D.C. Law 13-107, § 207, 47 DCR 1091.)

Prior Codifications. — 1981 Ed., § 43-2001.

Legislative history of Law 10-120. — Law 10-120, the "Cogeneration Facilities Appropriateness Standards Act of 1994," was introduced in Council and assigned Bill No. 10-447, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 17, 1994, it was assigned Act No. 10-210 and transmitted to both Houses of Congress for its review. D.C. Law 10-120 became effective on May 21, 1994.

Legislative history of Law 13-107. — Law 13-107, the "Retail Electric Competition and Consumer Protection Act of 1999," was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

§ 34-1302. Prohibition on the issuing of permits. [Repealed].

Repealed.

(May 21, 1994, D.C. Law 10-120, § 3, 41 DCR 1648; May 9, 2000, D.C. Law 13-107, § 207, 47 DCR 1091.)

Prior Codifications. — 1981 Ed., § 43-2002.

Legislative history of Law 10-120. — For legislative history of D.C. Law 10-120, see Historical and Statutory Notes following § 34-1301.

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1301.

§ 34-1303. Establishment of time frame for action. [Repealed].

Repealed.

(May 21, 1994, D.C. Law 10-120, § 4, 41 DCR 1648; May 9, 2000, D.C. Law 13-107, § 207, 47 DCR 1091.)

Prior Codifications. — 1981 Ed., § 43-2003.

Legislative history of Law 10-120. — For legislative history of D.C. Law 10-120, see Historical and Statutory Notes following § 34-1301.

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1301.

§ 34-1304. Submission of Appropriateness standards to the Council. [Repealed].

Repealed.

(May 21, 1994, D.C. Law 10-120, § 5, 41 DCR 1648; May 9, 2000, D.C. Law 13-107, § 207, 47 DCR 1091.)

Prior Codifications. — 1981 Ed., § 43-2004.

Legislative history of Law 10-120. — For legislative history of D.C. Law 10-120, see Historical and Statutory Notes following § 34-1301.

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1301.

CHAPTER 14. ELECTRIC LIGHT AND POWER COMPANIES.

Sec.
34-1401. Extension of overhead wires in Georgetown; extension of underground conduits in Mount Pleasant.
34-1402. Conduits and overhead wires for electric lighting prohibited in streets; house connections authorized.
34-1403. Certain existing conduits and overhead wires legalized.
34-1404. Electric lighting wires west of Rock Creek.
34-1405. Electric lighting wires east of Rock Creek.
34-1406. Permits for repair, extension, and enlargement of conduits.
34-1407. Extension of conduits; ducts for use of fire and police wires; maximum price of current; additional charge for nonpayment of bills.
34-1408. Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company.

§ 34-1401. Extension of overhead wires in Georgetown; extension of underground conduits in Mount Pleasant.

The Mayor of the District of Columbia may authorize any electric light company existing June 11, 1896, to construct and use under such regulations as the Council of the District of Columbia may fix conduits for the reception of overhead wires existing on said date within the territory formerly known as Georgetown, and to extend the same by an aggregate of not more than one and one-fourth miles of conduit in the same territory. And the United States Electric Lighting Company may extend its underground conduits and wires east of Rock Creek and within the fire limits to Mount Pleasant, and Washington and Columbia Heights under such regulations as the Council may prescribe.

(June 11, 1896, 29 Stat. 401, ch. 419, § 1.)

Cross references. — Highways, streets and bridges, authorization to electrify railroad lines, conduit systems, see §§ 9-1207.01 and 9-1207.03.

Inspections, electrical power, see §§ 2-131 and 2-132.

Private conduits, generally, see § 34-2501 et seq.

Public roads and bridges, jurisdiction in mayor, see § 9-101.02.

Section references. — This section is referred to in § 34-1402.

Prior Codifications. — 1981 Ed., § 43-1201.

1973 Ed., § 43-1101.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(317) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1402. Conduits and overhead wires for electric lighting prohibited in streets; house connections authorized.

Until Congress shall provide for a conduit system it shall be unlawful to lay conduits or erect overhead wires for electric lighting purposes in any road, street, avenue, highway, park, or reservation, except as specifically authorized by law; provided, however, that the Mayor of the District of Columbia is hereby authorized to issue permits for house connections with conduits and overhead wires existing on June 4, 1897, adjacent to the premises with which such connection is to be made; and also permits for public lighting connections with conduits existing on June 4, 1897, in the portion of the street proposed to be lighted. And nothing herein contained shall be construed to affect in any way any litigation pending on June 4, 1897, involving the validity or invalidity or legality of the construction of any conduits made since June 18, 1896, nor to prevent the United States Electric Lighting Company from extending conduits into Columbia Heights, Washington Heights, and Mount Pleasant within the fire limits as specifically provided in §§ 34-1401 and 34-1901.01.

(Mar. 3, 1897, 29 Stat. 673, ch. 387; June 4, 1897, 30 Stat. 41, ch. 2.)

Cross references. — Telegraph and telephone companies, wiring limitations, see § 34-1901.01.

Prior Codifications. — 1981 Ed., § 43-1202.

1973 Ed., § 43-1102.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1403. Certain existing conduits and overhead wires legalized.

All conduits existing on July 7, 1898, within the fire limits, and all overhead electric light wires existing on July 7, 1898, without the fire limits in the District of Columbia are hereby legalized until otherwise provided by law, and house connections may be made with such overhead electric light wires outside such fire limits.

(July 7, 1898, 30 Stat. 664, ch. 571, § 1.)

Prior Codifications. — 1981 Ed., § 43-1203.

1973 Ed., § 43-1103.

§ 34-1404. Electric lighting wires west of Rock Creek.

The Mayor of the District of Columbia is hereby authorized to issue permits to electric light companies existing on July 8, 1898, in the District of Columbia for the extension of overhead electric wires existing on July 8, 1898, outside the fire limits and west of Rock Creek to be used for lighting purposes only.

(July 8, 1898, 30 Stat. 753, Joint Res. No. 59.)

Prior Codifications. — 1981 Ed., § 43-1204.

1973 Ed., § 43-1104.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1405. Electric lighting wires east of Rock Creek.

The Mayor of the District of Columbia is hereby authorized, under conditions and regulations to be prescribed by the Council of the District of Columbia, to permit the erection of poles and the stringing of overhead wires thereon outside of the fire limits and east of Rock Creek for electric lighting purposes only.

(July 1, 1902, 32 Stat. 602, ch. 1352, § 1.)

Prior Codifications. — 1981 Ed., § 43-1205.

1973 Ed., § 43-1105.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(318) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1406. Permits for repair, extension, and enlargement of conduits.

The Mayor of the District of Columbia is hereby authorized to grant permits for the repair, enlargement, and extension, under proper regulations to be prescribed by the Council of the District of Columbia, of electric lighting conduits existing on June 6, 1900, and in every conduit constructed or to be

constructed under the provisions of this section, 3 ducts shall be reserved for the use of the United States and the District of Columbia.

(June 6, 1900, 31 Stat. 563, ch. 789, § 1.)

Cross references. — Building restrictions and regulations, flood hazards, subdivisions and developments, mayor to review proposals, see § 6-502.

Prior Codifications. — 1981 Ed., § 43-1206.

1973 Ed., § 43-1106.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(319) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1407. Extension of conduits; ducts for use of fire and police wires; maximum price of current; additional charge for nonpayment of bills.

The Mayor of the District of Columbia is authorized to grant permits for the repair, enlargement, and extension, under proper regulations, of existing electric-lighting conduits, and in every conduit constructed or to be constructed under the provisions of this section, 3 ducts shall be reserved for the use of the United States and the District of Columbia.

(Mar. 3, 1899, 30 Stat. 1053, ch. 422, § 1; May 9, 2000, D.C. Law 13-107, § 203, 47 DCR 1091.)

Cross references. — Building restrictions and regulations, flood hazards, subdivisions and developments, mayor to review proposals, see § 6-502.

Rate change procedures, appeal and review, see § 34-901.

Utility rates and rate discrimination, see §§ 34-702 to 34-704.

Utility service, valuation and accounts, service and facilities charges, certification, see § 34-1101.

Prior Codifications. — 1981 Ed., § 43-1207.

1973 Ed., § 43-1107.

Effect of amendments. — D.C. Law 13-107 deleted from the text the following concluding provisions: "As a condition for the right to use conduits built prior to March 3, 1899, or built or to be built under the provisions of this section, the electric lighting companies shall be required at all times to furnish to the public and to private consumers in all parts of the District of Columbia standard arc lights of not less than 1,000 actual candlepower, at a rate not exceeding $72 per annum for each arc light, The maximum price of electric current sold or furnished to any consumer in the District of Columbia shall not exceed $.10 per kilowatt hour. If consumers other than the government shall not pay monthly electric bills within 10 days after the same shall have been presented, said companies may charge and collect from said consumer so failing to pay said bill as aforesaid $.11 per kilowatt hour for the electric current furnished to said consumer during said month; and provided further, the right to amend, modify, or repeal the privileges granted in this section, and to further limit the prices herein specified, is hereby expressly reserved; any company charging or collecting an amount in excess of the rates prescribed in this section shall be deemed guilty of a misdemeanor, and shall pay to the District of Columbia the sum of $50 for each and every offense, to be collected as other fines are collected in the District of Columbia."

Legislative history of Law 13-107. — Law 13-107, the "Retail Electric Competition and Consumer Protection Act of 1999," was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

Editor's notes. — Deregulation of streetlighting service: § 130 of H.R. 3067, amended by H.R. 99-419, incorporated in Pub. L. 99-190 by § 101(c), the D.C. Appropriation Act, 1986, provided that the Public Service Commission is authorized to order and to approve the deregulation of streetlighting service to the District of Columbia as provided in its opinion and order in Formal Case No. 813, dated July 12, 1984 (Order No. 8056), § 34-204.93, § 34-1101, and this section, and provided that the provisions of this opinion and order regarding deregulation of streetlighting service are hereby ratified and declared to be in effect as of July 12, 1984 and shall continue to be in effect until revoked or rescinded.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(320) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

Normally, the unit for rate-making purposes for electricity is the entire interconnected operating property of the utility, without regard to geographical subdivisions, though conditions may be such as to require or permit segregation of a smaller unit. D.C. Code 1940, §§ 43-705, 43-706. Leeman v. Public Utilities Commission of District of Columbia, 104 F.Supp. 553, 1952 U.S. Dist. LEXIS 4351 (D.D.C1952).

§ 34-1408. Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company.

The Mayor of the District of Columbia is hereby authorized, in his discretion, to permit the Potomac Electric Power Company to make connections between its conduits and the conduits of the Washington Railway and Electric Company and all other companies controlled by the Washington Railway and Electric Company for the purpose of furnishing electric current through the said conduits for public and private uses, the use of said railway companies' conduits to be upon such terms as may be agreed upon between the said companies.

(Apr. 27, 1904, 33 Stat. 376, ch. 1628, § 1.)

Cross references. — Public utility, service, valuation and accounts, multiple company use of equipment, see § 34-1102.

Prior Codifications. — 1981 Ed., § 43-1208.

1973 Ed., § 43-1108.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CHAPTER 14A. RENEWABLE ENERGY PORTFOLIO STANDARDS.

Sec.
34-1431. Definitions.
34-1432. Renewable energy portfolio standard.
34-1433. Renewable energy credits.
34-1434. Reporting requirements and compliance fee.
34-1435. Recovery of fees and costs.
34-1436. Renewable Energy Development Fund.
34-1437. Renewable electricity tracking system.
34-1438. Application of renewable energy credits.
34-1439. Rules, duties, and powers of the Commission.

§ 34-1431. Definitions.

For the purposes of this chapter, the term:

(1) "Brush" means shrubs and stands of short, scrubby trees that do not reach merchantable size.

(2) "Commission" means the Public Service Commission.

(3) "Customer generation" means generation that is not principally dedicated to selling power into the wholesale market.

(4) "Dunnage" means loose materials or padding used to support or protect cargo within shipping containers.

(5) "Energy Office" means the District of Columbia Energy Office.

(6) "Electricity supplier" means a person, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or, markets electricity for sale to customers. The term excludes the following:

(A) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to occupants of the building for use by the occupants;

(B)(i) Any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates; or

(ii) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, and who does not:

(I) Take title to electricity;

(II) Market electric services to the individually-metered tenants of his or her building; or

(III) Engage in the resale of electric services to others;

(C) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property; and

(D) A consolidator.

(7) "Fund" means the District of Columbia Renewable Energy Development Fund.

(8) "PJM Interconnection" means the regional transmission organization that is regulated by the Federal Energy Regulatory Commission that functionally controls the transmission system for the region that includes the District of Columbia.

(9) "Qualifying biomass" means a solid, nonhazardous, cellulosic waste material that is segregated from other waste materials, and is derived from

any of the following forest-related resources, with the exception of old growth timber, unsegregated solid waste, or post-consumer wastepaper:

(A) Mill residue;

(B) Precommercial soft wood thinning;

(C) Slash;

(D) Brush;

(E) Yard waste;

(F) A waste pallet, crate, or dunnage;

(G) Agricultural sources, including tree crops, vineyard materials, grain, legumes, sugar, and other crop by-products or residues; or

(H) Cofired biomass, subject to the condition under § 34-1433(f).

(10) "Renewable energy credit" or "credit" means a credit representing one megawatt-hour of energy produced by a tier one or tier two renewable source located within the PJM Interconnection region or within a state that is adjacent to the PJM Interconnection region.

(11) "Renewable energy portfolio standard" or "standard" means the percentage of electricity sales at retail in the District of Columbia that is to be derived from tier one renewable sources and tier two renewable sources in accordance with § 34-1432(c).

(12) "Renewable on-site generator" means a person that generates electricity on site from a tier one renewable source or tier two renewable source for the person's own use.

(13) "Slash" means:

(A) Tree tops, branches, bark, or other residue left on the ground after logging or other forestry operations; or

(B) Tree debris left after a natural catastrophe.

(14) "Solar energy" means radiant energy, direct, diffuse, or reflected, received from the sun at wavelengths suitable for conversion into thermal, chemical, or electrical energy, that is collected, generated, or stored for use at a later time.

(15) "Tier one renewable source" means one or more of the following types of energy sources:

(A) Solar energy;

(B) Wind;

(C) Qualifying biomass;

(D) Methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant;

(E) Geothermal;

(F) Ocean, including energy from waves, tides, currents, and thermal differences; and

(G) Fuel cells producing electricity from a tier one renewable source under subparagraph (C) or (D) of this paraagraph.

(16) "Tier two renewable source" means one or more of the following types of energy sources:

(A) Hydroelectric power other than pumped storage generation; or

(B) Waste-to-energy.

(Apr. 12, 2005, D.C. Law 15-340, § 3, 52 DCR 2285; Oct. 22, 2008, D.C. Law

17-250, § 301(a), 55 DCR 9225; Sept. 24, 2010, D.C. Law 18-223, § 2223(a), 57 DCR 6242.)

Effect of amendments. — D.C. Law 17-250 rewrote par. (14), which had read as follows: "(14) 'Solar energy' means radiant energy, direct, diffuse, or reflected, received from the sun at wavelengths suitable for conversion into thermal, chemical, or electrical energy."

D.C. Law 18-223 rewrote par. (10).

Temporary Amendment of Section. — Section 2(a) of D.C. Law 18-217, in the lead-in language of par. (10), deleted "consumed".

Section 4(b) of D.C. Law 18-217 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 301(a) of Clean and Affordable Energy Emergency Act of 2008 (D.C. Act 17-508, September 25, 2008, 55 DCR 10856).

For temporary (90 day) amendment of section, see § 2(a) of Solar Thermal Incentive Emergency Amendment Act of 2010 (D.C. Act 18-426, May 21, 2010, 57 DCR 4775).

For temporary (90 day) amendment of section, see § 2223(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 15-340. — Law 15-340, the "Renewable Energy Portfolio Standard Act of 2004", was introduced in Council and assigned Bill No. 15-747 which was referred to the Committee on Public Interest. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-755 and transmitted to both Houses of Congress for its review. D.C. Law 15-340 became effective on April 12, 2005.

Legislative history of Law 17-250. — For Law 17-250, see notes following § 34-804.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 34-706.

§ 34-1432. Renewable energy portfolio standard.

(a) The Commission shall implement a renewable energy portfolio standard which applies to all District of Columbia retail electricity sales, except as provided under subsection (b) of this section.

(a-1)(1) For nonresidential solar heating, cooling, or process heat property systems producing or displacing greater than 10,000 kilowatt hours per year, the solar collectors used shall be SRCC OG-100 certified and the energy output shall be determined by an onsite energy meter that meets performance standards established by OIML.

(2) For nonresidential solar heating, cooling, or process heat property systems producing or displacing 10,000 or less than 10,000 kilowatt hours per year, the solar collectors used shall be SRCC OG-100 certified and the energy output shall be determined by the SRCC OG-300 annual system performance rating protocol or the solar collectors used shall be SRCC OG-100 certified and the energy output shall be determined by an onsite energy meter that meets performance standards established by OIML; and

(3) For residential solar thermal systems, the systems shall be SRCC OG-300 system certified and the energy output shall be determined by the SRCC OG-300 annual rating protocol or the solar collectors used shall be SRCC OG-100 certified and the energy output shall be determined by an onsite energy meter that meets performance standards established by OIML.

(b) If the standard becomes applicable to electricity sold to a customer after the start of a calendar year, the standard shall not apply to electricity sold to the customer during that portion of the year before the standard became applicable.

(c) The renewable energy portfolio standard shall be as follows:

(1) In 2011, 4% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.40% from solar energy;

(2) In 2012, 5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.50% from solar energy;

(3) In 2013, 6.5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.50% from solar energy;

(4) In 2014, 8% from tier one renewable sources; 2.5% from tier two renewable sources, and not less than 0.60% from solar energy;

(5) In 2015, 9.5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.70% from solar energy;

(6) In 2016, 11.5% from tier one renewable sources, 2% from tier two renewable sources, and not less than 0.825% from solar energy;

(7) In 2017, 13.5% from tier one renewable sources, 1.5% from tier two renewable sources, and not less than 0.98% from solar energy;

(8) In 2018, 15.5% from tier one renewable sources, 1% from tier two renewable sources, and not less than 1.15% from solar energy;

(9) In 2019, 17.5% from tier one renewable sources, 0.5% from tier two renewable sources, and not less than 1.35% from solar energy;

(10) In 2020, 20% from tier one renewable sources, 0% from tier two renewable sources, and not less than 1.58% from solar energy;

(11) In 2021, 20% from tier one renewable sources, 0% from tier two renewable sources, and not less than 1.85% from solar energy;

(12) In 2022, 20% from tier one renewable sources, 0% from tier two renewable sources, and not less than 2.175% from solar energy; and

(13) In 2023 and thereafter, 20% from tier one renewable sources, 0% from tier two renewable sources, and not less than 2.50% from solar energy.

(d) Subject to subsections (a) and (c) of this section, an electricity supplier shall meet the standard by obtaining the equivalent amount of renewable energy credits that equal the percentage required under this section for each electricity product sold at retail by the electricity supplier.

(e)(1) Subject to subsections (a) and (c) of this section, an electricity supplier shall meet the solar requirement by obtaining the equivalent amount of renewable energy credits from solar energy systems no larger than 5MW in capacity located within the District or in locations served by a distribution feeder serving the District.

(2)(A) After January 31, 2011, the Commission shall not certify any tier one renewable source solar energy system larger than 5MW in capacity or any tier one renewable source solar energy system not located within the District or in locations served by a distribution feeder serving the District.

(B) Any tier one renewable source solar energy system larger than 5MW in capacity shall be decertified by the Commission. Any tier one renewable source solar energy system not located within the District or in locations served by a distribution feeder serving the District, first certified by the Commission between February 1, 2011, and August 1, 2011, shall be decertified by the Commission.

(Apr. 12, 2005, D.C. Law 15-340, § 4, 52 DCR 2285; Oct. 22, 2008, D.C. Law

17-250, § 301(b), 55 DCR 9225; Sept. 24, 2010, D.C. Law 18-223, § 2223(b), 57 DCR 6242; Oct. 20, 2011, D.C. Law 19-36, § 2(a), 58 DCR 6837.)

Effect of amendments. — D.C. Law 17-250 added subsecs. (a-1) and (e); and rewrote subsec. (c).

D.C. Law 18-223 rewrote subsec. (e), which had read as follows: "(e) Subject to subsections (a) and (c) of this section, an electricity supplier shall meet the solar requirement by obtaining the equivalent amount of renewable energy credits from solar energy systems interconnected to the distribution grid serving the District of Columbia. Only after an electricity supplier exhausts all opportunity to meet this requirement that the solar energy systems be connected to the grid within the District of Columbia, can that supplier obtain renewable energy credits from jurisdictions outside the District of Columbia."

D.C. Law 19-36 rewrote subsecs. (a-1), (c), and (e).

Temporary Amendment of Section. — Section 2(b) of D.C. Law 18-217 substituted "located within the District" for "interconnected to the distribution grid serving the District of Columbia"; and deleted "that the solar energy systems be connected to the grid within the District of Columbia,".

Section 4(b) of D.C. Law 18-217 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 18-303 amended subsec. (a-1) to read as follows:

"(a-1)(1) For nonresidential solar heating, cooling, or process heat property systems producing or displacing greater than 10,000 kilowatt hours per year, the solar collectors used shall be SRCC OG-100 certified and the energy output shall be determined by an onsite energy meter that meets performance standards established by the International Organization of Legal Meterology ('OIML').

"(2) For nonresidential solar heating, cooling, or process heat property systems producing not more than 10,000 kilowatt hours per year, the solar collectors used shall be SRCC OG-100 certified and the energy output shall be determined by the SRCC OG-300 annual system performance rating protocol or by an onsite energy meter that meets performance standards established by OIML.

"(3) For residential solar thermal systems, the systems shall be SRCC OG-300 system certified and the energy output shall be determined by the SRCC OG-300 annual rating protocol or by an onsite energy meter that meets performance standards established by OIML.

Section 4(b) of D.C. Law 18-303 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 301(b) of Clean and Affordable Energy Emergency Act of 2008 (D.C. Act 17-508, September 25, 2008, 55 DCR 10856).

For temporary (90 day) amendment of section, see § 2(b) of Solar Thermal Incentive Emergency Amendment Act of 2010 (D.C. Act 18-426, May 21, 2010, 57 DCR 4775).

For temporary (90 day) amendment of section, see § 2223(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 2 of Solar Collector Certification Emergency Amendment Act of 2010 (D.C. Act 18-600, November 17, 2010, 57 DCR 11035).

For temporary (90 day) amendment of section, see § 2(a) of Distributed Generation Emergency Amendment Act of 2011 (D.C. Act 19-126, August 1, 2011, 58 DCR 6766).

For temporary (90 day) amendment of section, see § 2(a) of Distributed Generation Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-192, October 18, 2011, 58 DCR 9154).

Legislative history of Law 15-340. — For Law 15-340, see notes following § 34-1431.

Legislative history of Law 17-250. — For Law 17-250, see notes following § 34-804.

Legislative history of Law 19-36. — Law 19-36, the "Distributed Generation Amendment Act of 2011", was introduced in Council and assigned Bill No. 19-10, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 7, 2011, and July 12, 2011, respectively. Signed by the Mayor on August 9, 2011, it was assigned Act No. 19-151 and transmitted to both Houses of Congress for its review. D.C. Law 19-36 became effective on October 20, 2011.

Editor's Note For definitions of "SRCC" and "OML" found in subsection (a-1), see § 8-1773.01.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 34-706.

Editor's notes. — Section 3 of D.C. Law 19-36 provided: "Sec. 3. Applicability. (a) This act shall apply as of the effective date of the Distributed Generation Emergency Amendment Act of 2011, passed on emergency basis on July 12, 2011 (Enrolled version of Bill 19-384) August 11, 2011 .

"(b) This act shall not apply to contracts entered into prior to the date determined pursuant to subsection (a) of this section."

§ 34-1433. Renewable energy credits.

(a) Energy from a tier one renewable source:

(1) Shall be eligible for inclusion in meeting the standard regardless of when the generating system or facility was placed in service; and

(2) May be applied to the percentage requirements of the standard for either tier one renewable sources or tier two renewable sources.

(b) Energy from a tier two renewable source shall be eligible for inclusion in meeting the renewable energy portfolio standard through 2017 if it is generated at a system or facility that existed and was operational as of January 1, 2004.

(c) On or after January 1, 2006, an electricity supplier may:

(1) Receive renewable energy credits; and

(2) Accumulate renewable energy credits under this chapter.

(d) On or before December 31, 2006, an electricity supplier shall receive 120% credit toward meeting the renewable energy portfolio standard for energy derived from wind or solar sources.

(e) After December 31, 2006, and on or before December 31, 2009, an electricity supplier shall receive 110% credit toward meeting the renewable energy portfolio standard for energy derived from wind or solar sources.

(f) On or before December 31, 2009, an electricity supplier shall receive 110% credit toward meeting the renewable energy portfolio standard for energy derived from methane under § 34-1431(14)(D).

(g)(1) An electricity supplier may not use the incineration of solid waste to meet more than 20% of the standard for tier two renewable sources for a given year.

(2) After December 31, 2012, the incineration of solid waste shall not be eligible to generate renewable energy credits.

(h)(1) An electricity supplier shall receive credit toward meeting the standard for electricity derived from the biomass fraction of biomass cofired with other fuels.

(2) Credits that a renewable on-site generator surrenders to its electricity supplier to meet the standard and that the electricity supplier relies on in submitting its compliance report shall not be resold or retransferred by the renewable on-site generator.

(3) The renewable on-site generator may retain or transfer any credits in excess of the amount needed to satisfy the standard for the renewable on-site generator's load.

(4) A renewable on-site generator that satisfies the standard applicable to the renewable on-site generator's load under this subsection shall not be required to contribute to a compliance fee recovered under § 34-1435.

(5) The Commission shall adopt regulations or orders governing the application and transfer of credits under this subsection.

(i) A tier one renewable source or tier two renewable source that creates a renewable energy credit shall comply with all applicable environmental and administrative requirements, including air quality, water quality, solid waste, and right-to-know provisions, permit conditions, and administrative orders.

(Apr. 12, 2005, D.C. Law 15-340, § 5, 52 DCR 2285.)

Legislative history of Law 15-340. — For Law 15-340, see notes following § 34-1431.

§ 34-1434. Reporting requirements and compliance fee.

(a) Each electricity supplier shall submit an annual compliance report to the Commission, by a date and in a form prescribed by the Commission.

(b)(1) Each report shall include clear and concise information that:

(A) Demonstrates that the electricity supplier has complied with the applicable standard under § 34-1432 and includes the submission of the required amount of renewable energy credits; or

(B) Demonstrates the amount of electricity sales by which the electricity supplier fails to meet the applicable renewable energy portfolio standard.

(2) Each report shall also include any other information that the Commission by regulation or order may consider relevant.

(c) If an electricity supplier fails to comply with the renewable energy portfolio standard for the applicable year, the electricity supplier shall pay into the Fund a compliance fee of:

(1) Five cents for each kilowatt-hour of shortfall from required tier one renewable sources;

(2) One cent for each kilowatt-hour of shortfall from required tier two renewable sources; and

(3) Fifty cents in 2011 through 2016; 35 cents in 2017; 30 cents in 2018; 20 cents in 2019 through 2020; 15 cents in 2021 through 2022; and 5 cents in 2023 and thereafter for each kilowatt-hour of shortfall from required solar energy sources.

(d) Beginning on March 1, 2010, and annually thereafter, energy companies that sell electricity in the District of Columbia shall file an energy portfolio report for the preceding calendar year with DDOE, which shall include a breakdown of the average cost per kilowatt hour of electricity that the company sold in the District of Columbia by source of generation, to include coal, gas, oil, nuclear, solar, land-based wind, off-shore wind, and other renewable sources. The breakdown of cost should also include the average capital cost per kilowatt, as well as the average fixed and variable costs associated with operations and maintenance per megawatt.

(e) Repealed.

(Apr. 12, 2005, D.C. Law 15-340, § 6, 52 DCR 2285; Oct. 22, 2008, D.C. Law 17-250, § 301(c), 55 DCR 9225; Oct. 20, 2011, D.C. Law 19-36, § 2(b), 58 DCR 6837.)

Effect of amendments. — D.C. Law 17-250 rewrote subsecs. (c)(1) and (3); and added subsecs. (c)(4), (5).

D.C. Law 19-36 rewrote subsec. (c)(3); redesignated subsec. (c)(4) as subsec. (d); redesignated subsec. (c)(5) as subsec. (e); and repealed newly designated subsec. (e).

Emergency legislation. — For temporary (90 day) amendment of section, see § 301(c) of Clean and Affordable Energy Emergency Act of 2008 (D.C. Act 17-508, September 25, 2008, 55 DCR 10856).

For temporary (90 day) amendment of section, see § 2(b) of Distributed Generation Emergency Amendment Act of 2011 (D.C. Act 19-126, August 1, 2011, 58 DCR 6766).

For temporary (90 day) amendment of section, see § 2(b) of Distributed Generation Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-192, October 18, 2011, 58 DCR 9154).

Legislative history of Law 15-340. — For Law 15-340, see notes following § 34-1431.

Legislative history of Law 17-250. — For Law 17-250, see notes following § 34-804.

Legislative history of Law 19-36. — For history of Law 19-36, see notes under § 34-1432.

Editor's notes. — Section 3 of D.C. Law 19-36 provided: "Sec. 3. Applicability. (a) This act shall apply as of the effective date of the Distributed Generation Emergency Amendment Act of 2011, passed on emergency basis on July 12, 2011 (Enrolled version of Bill 19-384) August 11, 2011 .

"(b) This act shall not apply to contracts entered into prior to the date determined pursuant to subsection (a) of this section."

§ 34-1435. Recovery of fees and costs.

(a) The Commission shall allow the local distribution company to recover actual dollar-for-dollar prudently costs incurred, including a compliance fee under § 34-1434, in complying with a mandated renewable energy portfolio standard. The electricity distribution company may also pass through its prudently incurred additional costs, if any, associated with complying with the standard, through the end of the year of standard offer service in which the requirement took effect.

(b) An electricity supplier may recover a compliance fee if:

(1) The payment of a compliance fee is the least-cost measure to ratepayers as compared to the purchase of tier one renewable sources, tier two renewable sources, or solar energy to comply with a renewable energy portfolio standard; or

(2) There are insufficient tier one renewable sources, tier two renewable sources, or solar energy available for the electricity supplier to comply with a renewable energy portfolio standard.

(c) Any cost recovery under this section:

(1) May be in the form of a nonbypassable surcharge to current applicable customers; and

(2) Shall be disclosed on applicable customer bills.

(Apr. 12, 2005, D.C. Law 15-340, § 7, 52 DCR 2285.)

Legislative history of Law 15-340. — For Law 15-340, see notes following § 34-1431.

§ 34-1436. Renewable Energy Development Fund.

(a) There is established a fund designated as the Renewable Energy Development Fund, which shall be separate from the General Fund of the District of Columbia and shall be used solely for the purposes set forth in this section. All fees, payment, investment earnings, or other funds received, and all interest on the funds, shall be deposited into the Fund without regard to fiscal year limitation and shall not any time be transferred to, or lapse into, or be commingled with the General Fund of the District of Columbia or any other fund or account of the District of Columbia, except as delineated in this section. The Fund shall be continually available for the uses and purposes set forth in subsection (c) of this section.

(b) The Fund established by this section shall be administered by the Energy Office. The Energy Office shall receive and review applications for loans, grants, rebates, and other financial incentives for eligible projects from the Fund.

(c) The Fund shall be used solely for the purpose of making loans, grants, rebates, and other financial incentives to support the creation of new solar energy sources in the District of Columbia and for otherwise administering the Fund.

(d) Proceeds for the Fund shall be collected from the following:

(1) Compliance fees paid under § 34-1434;

(2) Payments received in repayment of a loan;

(3) Investment earnings of the Fund; and

(4) Any other money from any other source accepted for the benefit of the Fund.

(e) The Energy Office shall establish the eligibility criteria for projects supported by the Fund. The Energy Office may allow the use of money of the Fund for administrative expenses related to the Fund and project review and oversight.

(f) The DDOE shall provide to the Council a quarterly report detailing:

(1) Expenditures from the Renewable Energy Development Fund; and

(2) The performance of programs or projects funded by the Renewable Energy Development Fund.

(g) Any compliance fees paid into the Fund by an electricity supplier that were charged to the District of Columbia government through a cost recovery surcharge authorized in § 34-1435(c) shall be transferred from the Fund to the General Fund of the District of Columbia and used to cover any surcharge owed by the District of Columbia government.

(Apr. 12, 2005, D.C. Law 15-340, § 8, 52 DCR 2285; Oct. 22, 2008, D.C. Law 17-250, § 301(d), 55 DCR 9225; Sept. 24, 2010, D.C. Law 18-223, § 1112, 57 DCR 6242; Oct. 20, 2011, D.C. Law 19-36, § 2(c), 58 DCR 6837.)

Effect of amendments. — D.C. Law 17-250 added subsec. (f).

D.C. Law 18-223, in subsecs. (b) and (c), substituted "loans, grants, rebates, and other financial incentives" for "loans and grants".

D.C. Law 19-36, in subsec. (a), substituted "account of the District of Columbia, except as delineated in this section" for "account of the District of Columbia"; and added subsec. (g).

Emergency legislation. — For temporary (90 day) amendment of section, see § 301(d) of Clean and Affordable Energy Emergency Act of 2008 (D.C. Act 17-508, September 25, 2008, 55 DCR 10856).

For temporary (90 day) amendment of section, see § 1112 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 2(c) of Distributed Generation Emergency Amendment Act of 2011 (D.C. Act 19-126, August 1, 2011, 58 DCR 6766).

For temporary (90 day) amendment of section, see § 2(c) of Distributed Generation Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-192, October 18, 2011, 58 DCR 9154).

Legislative history of Law 15-340. — For Law 15-340, see notes following § 34-1431.

Legislative history of Law 17-250. — For Law 17-250, see notes following § 34-804.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 34-706.

Legislative history of Law 19-36. — For history of Law 19-36, see notes under § 34-1432.

Short title. — Short title: Section 1111 of D.C. Law 18-223 provided that subtitle L of title I of the act may be cited as the "Renewable Energy Development Amendment Act of 2010".

Editor's notes. — Section 3 of D.C. Law 19-36 provided: "Sec. 3. Applicability. (a) This act shall apply as of the effective date of the Distributed Generation Emergency Amendment Act of 2011, passed on emergency basis on July 12, 2011 (Enrolled version of Bill 19-384) August 11, 2011 .

"(b) This act shall not apply to contracts entered into prior to the date determined pursuant to subsection (a) of this section."

§ 34-1437. Renewable electricity tracking system.

(a) The Commission shall select a market-based renewable electricity tracking system to facilitate the creation and transfer of renewable energy credits.

(b) The Commission may designate the Energy Office to administer the electricity tracking system. The Commission or the Energy Office may contract with a for-profit or a nonprofit entity to assist in the administration of the electricity tracking system required under this section.

(c) To the extent practicable, the tracking system shall be the generation attributes tracking system developed by PJM Interconnection.

(Apr. 12, 2005, D.C. Law 15-340, § 9, 52 DCR 2285.)

Legislative history of Law 15-340. — For Law 15-340, see notes following § 34-1431.

§ 34-1438. Application of renewable energy credits.

(a) An electricity supplier may use accumulated renewable energy credits to meet the renewable energy portfolio standard by submitting them to the Commission as evidence of compliance.

(b) A renewable energy credit may be sold or otherwise transferred.

(c) Except as authorized under section (d) of this section, a renewable energy credit shall exist for 3 years from the date created.

(d) A renewable energy credit may be diminished or extinguished before the expiration of 3 years by:

(1) The electricity supplier that received the credit;

(2) A nonaffiliated entity of the electricity supplier:

(A) That purchased the credit from the electricity supplier receiving the credit;

(B) To whom the electricity supplier otherwise transferred the credit; or

(3) Demonstrated compliance by the generating facility with the requirements of § 34-1433(i).

(Apr. 12, 2005, D.C. Law 15-340, § 10, 52 DCR 2285.)

Legislative history of Law 15-340. — For Law 15-340, see notes following § 34-1431.

§ 34-1439. Rules, duties, and powers of the Commission.

(a) The Commission may impose an administrative fee on a renewable energy credit transaction, but the amount of the fee may not exceed the Commission's actual direct cost of processing the transaction.

(b) On or before April 1 of each year, the Commission shall provide a report

to the Council on the status of implementation of this chapter, including the availability of tier one renewable sources, certification of the number of credits generated by the utilities meeting the requirements of § 34-1432, and any other such information as the Council shall consider necessary.

(c) The Commission shall adopt regulations to implement the provisions of this chapter.

(d) The Commission shall establish standards, by order or regulation, to account for customer generation from eligible renewable resources for compliance with § 34-1432.

(Apr. 12, 2005, D.C. Law 15-340, § 11, 52 DCR 2285.)

Legislative history of Law 15-340. — For Law 15-340, see notes following § 34-1431.

CHAPTER 15. RETAIL ELECTRIC COMPETITION AND CONSUMER PROTECTION.

Sec.
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§ 34-1501. Definitions.

For the purposes of this chapter, the term:

(1) "Affiliate" means a person who directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with, or has directly or indirectly, any economic interest in another person.

(2) "Aggregator" means a person who acts on behalf of customers to purchase electricity.

(3) "Aggregation program" means any system developed by an aggregator for organizing customers into a single purchasing unit.

(4) "Anticompetitive condition" means a condition which would allow a party to:

(A) Exercise vertical or horizontal market power;

(B) Use the ownership or control of a regulated facility to favor an unregulated affiliate or subsidiary or to discriminate against a non-affiliated entity;

(C) Erect a barrier to entry; or

(D) Compete unfairly or deny effective competition to consumers.

(5) "Anticompetitive conduct" means an activity which would:

(A) Violate any applicable antitrust law;

(B) Constitute favorable treatment of an affiliate;

(C) Discriminate against an unrelated entity;

(D) Constitute a barrier to entry; or

(E) Confer an unfair competitive advantage upon an entity.

(6) "Bid premium" means a payment by an electricity supplier to the Commission for the right to provide standard offer service in the District of Columbia.

(7) "Broker" means a person who acts as an agent or intermediary in the sale and purchase of electricity but who does not take title to electricity.

(8) "Competitive billing" means the right of a customer to receive a single bill from the electric company, a single bill from the electricity supplier, or separate bills from the electric company and the electricity supplier.

(9) "Commission" means the Public Service Commission of the District of Columbia.

(10) "Competitive Transition Charge" means a rate, charge, credit, or other appropriate mechanism authorized to be imposed for the recovery of transition costs as determined by the Commission under § 34-1510.

(11) "Consolidator" means any owner of or property manager for multi-family residential, commercial office, industrial, and retail facilities who combines more than one property for the primary purpose of contracting with an aggregator or electric energy service provider for electric energy services for those properties, and who:

(A) Does not take title to electric energy;

(B) Does not sell electric energy to buildings not owned or managed by such owner or property manager;

(C) Does not offer aggregation of electric energy services to other, unrelated end-users; and

(D) Arranges for the purchase of electric energy services only from duly licensed electric energy service providers or aggregators.

(12) "Consumer" or "customer" each means a purchaser of electricity for end use in the District of Columbia. The term excludes an occupant of a building where the owner, lessee, or manager manages the internal distribution system serving the building and supplies electricity solely to occupants of the building for use by the occupants.

(13) "Customer-based aggregation program" means a program in which customers pool their loads to shop more effectively for electricity supply, electricity supply services, or any service declared to be a potentially competitive service.

(14) "Customer choice" or "choice of electricity suppliers" each means the right of electricity suppliers and consumers to use and interconnect with the electric distribution system on a nondiscriminatory basis in order to distribute electricity from any electric supplier to any customer. Under this right, consumers shall have the opportunity to purchase electricity supply from their choice of licensed electricity suppliers.

(15) "Customer-generator" means a residential or commercial customer that owns and operates an electric generating facility that:

(A) Has a capacity of not more than 1000 kilowatts;

(B) Uses renewable resources, cogeneration, fuel cells, or microturbines;

(C) Is located on the customer's premises;

(D) Is interconnected with the electric company's transmission and distribution facilities; and

(E) Is intended primarily to offset all or part of the customer's own electricity requirements.

(16) "Effective competition" means, with respect to the markets for electricity supply, billing, and those services declared by the Commission to be potentially competitive services a market structure under which an individual seller is not able to influence significantly the price of the service as a result of the number of sellers of the service, the size of each seller's share of the

market, the ability of the sellers to enter or exit the market, and the price and availability of comparable substitutes for the service.

(17) "Electricity supplier" means a person, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or, markets electricity for sale to customers. The term excludes the following:

(A) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to occupants of the building for use by the occupants;

(B)(i) Any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates; or

(ii) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, and who does not:

(I) Take title to electricity;

(II) Market electric services to the individually-metered tenants of his or her building; or

(III) Engage in the resale of electric services to others;

(C) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property; and

(D) A consolidator.

(17A) "Gender identity or expression" shall have the same meaning as provided in § 2-1401.02(12A).

(18) "Initial implementation date" means the first day on which customers in the District of Columbia shall have the ability to choose an electricity supplier. Unless accelerated or delayed by the Commission under § 34-1502(c), the initial implementation date shall be January 1, 2002.

(19) "Marketer" means a person who purchases and takes title to electricity as an intermediary for sale to customers.

(20) "Market participant" means any electricity supplier (including an affiliate of the electric company) or any person providing billing services or services declared by the Commission to be potentially competitive services.

(21) "Net energy metering" means measuring the difference between the electricity supplied to an eligible customer-generator from the electric grid and the electricity generated and fed back to the electric grid by the eligible customer-generator.

(22) "Pilot program" means a transitional program approved by the Commission prior to the initial implementation date under which customer choice is implemented for a percentage of each customer class.

(23) "Potentially competitive service" means a component of electric service (other than electricity supply and billing) determined by the Commission to be suitable for purchase by customers from alternative sellers under § 34-1504(e).

(24)(A) "Public purpose program" means a program implemented with the intention of furthering a public purpose.

(B) "Public purpose program" includes:

(i) A universal service program;

(ii) A program encouraging renewable energy resources;

(iii) A demand-side management or other energy efficiency or conservation program; and

(iv) A consumer education program.

(25) "Schedule" means a list of the dates on which each customer class, or a designated percentage of each customer class, is eligible for customer choice and competitive billing.

(26) "Standard offer service" means that electric service mandated by § 13-1509.

(28) "Transition costs" means costs, liabilities, and investments (including regulatory assets) allocable to the District of Columbia to the extent the costs, liabilities, and investments:

(A) Traditionally have been or would be recoverable under the existing regulatory structure (with retail rates for the provision of electric service), but will not be recoverable in the restructured electricity supply market; or

(B) Arise as a result of electric industry restructuring and are related to the creation of customer choice.

(29) "Wholesale electricity supplier" means the electric company, which, pursuant to § 34-1509, obtains bids from, and contracts for electric service with, third parties and provides standard offer service to retail customers.

(May 9, 2000, D.C. Law 13-107, § 101, 47 DCR 1091; Mar. 30, 2004, D.C. Law 15-113, § 2(a), 51 DCR 1349; June 25, 2008, D.C. Law 17-177, § 18(a), 55 DCR 3696; Oct. 22, 2008, D.C. Law 17-250, § 302, 55 DCR 9225.)

Effect of amendments. — D.C. Law 15-113 added par. (29).

D.C. Law 17-177 added par. (17A).

D.C. Law 17-250, in par. (15)(A), substituted "1000 kilowatts" for "100 kilowatts".

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Electric Standard Offer Service Emergency Amendment Act of 2003 (D.C. Act 15-276, December 18, 2003, 51 DCR 47).

For temporary (90 day) amendment of section, see § 2(a) of Electric Standard Offer Service Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-400, March 18, 2004, 51 DCR 3636).

For temporary (90 day) amendment of section, see § 302 of Clean and Affordable Energy Emergency Act of 2008 (D.C. Act 17-508, September 25, 2008, 55 DCR 10856).

Legislative history of Law 13-107. — Law 13-107, the "Retail Electric Competition and Consumer Protection Act of 1999," was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

Legislative history of Law 15-113. — Law 15-113, the "Electric Standard Offer Service Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-439, which was referred to the Committee on Public Interest. The Bill was adopted on first and second readings on December 2, 2003, and January 6, 2004, respectively. Signed by the Mayor on January 27, 2004, it was assigned Act No. 15-300 and transmitted to both Houses of Congress for its review. D.C. Law 15-113 became effective on March 30, 2004.

Legislative history of Law 17-177. — Law 17-177, the "Prohibition of Discrimination on the Basis of Gender Identity and Expression Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-330, which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on February 5, 2008, and March 4, 2008, respectively. Signed by the Mayor on March 19, 2008, it was assigned Act No. 17-329 and transmitted to both Houses of Congress for its review. D.C. Law 17-177 became effective on June 25, 2008.

Legislative history of Law 17-250. — For Law 17-250, see notes following § 34-804.

§ 34-1502. Implementation of customer choice.

(a) On and after the initial implementation date, the supply and sale of electricity shall not be regulated except as expressly set forth in this chapter.

(b)(1) Unless accelerated or delayed pursuant to subsection (c) of this section, customer choice shall begin on the initial implementation date. Customer choice must be available for all consumers, regardless of customer class, no later than 2 years after the initial implementation date.

(2) Prior to the initial implementation date, the Commission shall determine a schedule for the phase-in of customer choice. The Commission may, in its discretion, forego a phase-in and make customer choice available for all consumers on the initial implementation date.

(c) The Commission may delay the initial implementation date based on considerations of reliability, safety, or market power, but under no circumstances shall the initial implementation date be delayed beyond January 1, 2003.

(d)(1) Prior to the initial implementation date, the Commission may establish a pilot program.

(2)(A) A minimum of 10% of each customer class shall be eligible to participate in any pilot program established by the Commission.

(B) Notwithstanding any other provision of this chapter, any pilot program established by the Commission may include all commercial customers.

(C) Notwithstanding any other provision of this chapter, any pilot program established by the Commission may include competitive billing.

(e) The District of Columbia and its agencies and instrumentalities shall have the right to petition the Commission prior to the initial implementation date for permission to enter into an electricity supply contract with any electricity supplier. Purchases of electric power under the supply contract may commence at any time, and under terms and conditions, as may be designated by the Commission.

(f) Notwithstanding any other provision of this chapter, customer choice, including any pilot program under subsection (d) of this section and any supply contract under subsection (e) of this section, may not commence until legislation is enacted to conform District of Columbia taxes to the restructuring of the electric industry.

(May 9, 2000, D.C. Law 13-107, § 102, 47 DCR 1091.)

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

§ 34-1503. Competitive billing.

(a) Competitive billing shall begin on the initial implementation date and shall be implemented according to a schedule to be determined by the Commission. The Commission shall have the discretion to implement competitive billing for all customers on a single date.

(b) This section shall not preclude the Commission from including competitive billing as a part of any pilot program established by the Commission.

(May 9, 2000, D.C. Law 13-107, § 103, 47 DCR 1091.)

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

§ 34-1504. Role, duties, and powers of the Commission.

(a) The Commission's assessment, approval, and oversight of restructuring plans, pilot programs, and the transition process, and regulation of the restructured electric industry, shall ensure orderliness and electric system reliability and shall take into consideration the interests of customers, electricity suppliers, and the electric company.

(b) Unless otherwise specified, the Commission shall adopt regulations or issue the orders required under this chapter before the initial implementation date. This requirement shall not affect the validity of amendments to those regulations or orders adopted after the initial implementation date.

(c)(1) The Commission shall adopt regulations or issue orders to:

(A) Implement competitive billing under § 34-1503;

(B) Govern the licensing of electricity suppliers and other market participants under § 34-1505;

(C)(i) Require access by customers and electricity suppliers to the electric company's distribution system on a non-discriminatory basis in accordance with § 34-1506; and

(ii) Prevent the electric company from operating its distribution system in any manner that favors the electricity supply of the electric company's affiliates in violation of § 34-1506;

(D) Implement the consumer protections in § 34-1507;

(E) Establish procedural rules for complaints, investigations, and dispositional hearings under § 34-1508;

(F) Govern proceedings under § 34-1512;

(G) Establish the universal service, energy efficiency, and renewable source programs mandated by § 34-1514 [repealed]; and

(H) Govern the construction of new electric generating facilities under § 34-1516.

(2)(A)(i) Under criteria established by Commission regulation or order, the Commission shall determine for each electricity supplier licensed under § 34-1505 whether it is feasible for that electricity supplier to disclose every 6 months emissions on a pound per megawatt-hour basis and the fuel mix of the electricity sold by that supplier in the District of Columbia. For fuel mix, the categories include electricity generated from coal, natural gas, nuclear energy, oil, hydroelectric, solar, biomass, wind, and other sources. For emissions, the categories include carbon dioxide, nitrogen oxide, sulfur dioxide, and any other pollutants specified by the Commission.

(ii) The Commission shall make a determination of feasibility under sub-subparagraph (i) of this subparagraph either within 6 months after the

date on which an electricity supplier receives a license under § 34-1505 or within 6 months of April 12, 2005.

(B) If the Commission determines under subparagraph (A)(i) of this paragraph that it is feasible for an electricity supplier to disclose the emissions and fuel mix of the electricity sold by that supplier in the District of Columbia, the Commission, by regulation or order, shall require the electricity supplier to disclose every 6 months the emissions and fuel mix of the electricity sold by the supplier in the District of Columbia in the categories provided in subparagraph (A)(i) of this paragraph.

(C) If the Commission determines under subparagraph (A)(i) of this paragraph that it is not feasible for an electricity supplier to disclose the emissions and fuel mix of the electricity sold by the supplier in the District of Columbia, the Commission, by regulation or order, shall require the electricity supplier to disclose to its customers every 6 months a regional emissions and fuel mix average in the categories provided in subparagraph (A)(i) of this paragraph.

(3) The Commission shall, by regulation or order, require the unbundling of electric company rates, charges, and services into standardized categories determined by the Commission.

(4) The Commission shall, by regulation or order, require that customers' bills indicate, as an individual line item, charges for electricity supply.

(5) The Commission shall issue regulations or orders to:

(A) Establish reasonable restrictions on telemarketing;

(B) Establish reasonable procedures for contracting between residential and small commercial customers and electricity suppliers; and

(C) Establish reasonable requirements and limitations relating to deposits, billing, contract cancellations, and disconnections.

(6)(A) The Commission shall order the electric company, in conjunction with the Commission, the Office of the People's Counsel, and the District of Columbia Office of Energy, to implement a consumer education program informing consumers of changes in the electric industry.

(B) As part of the consumer education program under this paragraph, the Commission shall develop and maintain information regarding rates charged and services provided by licensed electricity suppliers to small commercial and residential customers. The information required in this subparagraph shall be:

(i) Readily understandable and formatted to provide a comparison of rates and services offered by electricity suppliers; and

(ii) Made available to the public through the ordinary means of publication of the Commission, including posting on the Internet.

(C) Any dispute regarding the consumer education program mandated by this paragraph shall be resolved by the Commission.

(7) The Commission may adopt any other regulations, or issue any other orders, consistent with the policies enunciated in this chapter and necessary to ensure the development of a competitive market for electricity supply, billing, and any component of electric service declared to be a potentially competitive service.

(d)(1) Notwithstanding any other provision of law, the Commission may regulate the regulated services of the electric company through alternative forms of regulation.

(2) The Commission may adopt an alternative form of regulation if the Commission finds that the alternative form of regulation:

(A) Protects consumers;

(B) Ensures the quality, availability, and reliability of regulated electric services; and

(C) Is in the interest of the public, including shareholders of the electric company.

(3) Alternative forms of regulation may include:

(A) Price regulation, including price freezes or caps;

(B) Revenue regulation;

(C) Ranges of authorized return;

(D) Rate of return;

(E) Categories of services; and

(F) Price-indexing.

(e)(1) The Commission may declare that a component of electric service, other than electricity supply and billing, is a potentially competitive service if:

(A) Provision of the service by alternative sellers will not harm any class of customers;

(B) Provision of the service will decrease the cost of providing the service to customers in the District of Columbia or increase the quality or innovation of the electric service to customers in the District of Columbia;

(C) Effective competition in the market for that service is likely to develop; and

(D) Provision of the service by alternative sellers will not otherwise jeopardize the safety and reliability of electric service in the District of Columbia.

(2) Any order declaring a component of electric service to be a potentially competitive service shall provide for the recovery by the electric company of all verifiable costs that would have been recoverable under the traditional regulatory structure but which will not be recoverable as a result of the order under subsection (c)(1) of this section.

(f)(1) Nothing contained in this section shall prohibit the Commission from implementing or modifying a pilot program under § 34-1502(d).

(2) Nothing contained in this section shall prohibit the Commission from allowing the adoption of a supply contract under § 34-1502(e).

(May 9, 2000, D.C. Law 13-107, § 104, 47 DCR 1091; Apr. 12, 2005, D.C. Law 15-342, § 304(a), 52 DCR 2346.)

Effect of amendments. — D.C. Law 15-342 rewrote subsec. (c)(2) which had read:

"(2)(A)(i) Under criteria established by Commission regulation or order, the Commission shall determine for each electricity supplier licensed under § 34-1505 whether it is feasible for that electricity supplier to disclose every 6 months the fuel mix of the electricity sold by that supplier in the District of Columbia, including categories of electricity from coal, natural gas, nuclear energy, oil, hydroelectric, solar, biomass, wind, and other sources.

"(ii) The Commission shall make a determination of feasibility under sub-subparagraph (i)

of this subparagraph within 6 months after the date on which an electricity supplier receives a license under § 34-1505.

"(B) If the Commission determines under subparagraph (A)(i) of this paragraph that it is feasible for an electricity supplier to disclose the fuel mix of the electricity sold by that supplier in the District of Columbia, the Commission, by regulation or order, shall require the electricity supplier to disclose every 6 months the fuel mix of the electricity sold by the supplier in the District of Columbia, including categories of electricity from coal, natural gas, nuclear energy, oil, hydroelectric, solar, biomass, wind, and other sources.

"(C) If the Commission determines under subparagraph (A)(i) of this paragraph that it is not feasible for an electricity supplier to disclose the fuel mix of the electricity sold by the supplier in the District of Columbia, the Commission, by regulation or order, shall require the electricity supplier to disclose to its customers every 6 months a regional fuel mix average."

Emergency legislation. — For temporary (90 day) amendment of section, see § 304(a) of Omnibus Utility Emergency Amendment Act of 2005 (D.C. Act 16-12, January 28, 2005, 52 DCR 2945).

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

Legislative history of Law 15-342. — For Law 15-342, see notes following § 34-401.

§ 34-1505. Licensing requirements.

(a) All electricity suppliers must obtain a license issued by the Commission in order to do business in the District of Columbia.

(b) An application for an electricity supplier license shall:

(1) Be made to the Commission in writing on a form adopted by the Commission;

(2) Be verified by oath or affirmation;

(3) Be accompanied by an application fee determined by the Commission; and

(4) Contain the following:

(A) Proof of technical and managerial competence;

(B) Proof of compliance with all applicable requirements of the Federal Energy Regulatory Commission and any independent system operator or regional or system transmission operator to be used by the applicant;

(C) Proof of compliance with all applicable federal and District of Columbia environmental laws;

(D) Proof of financial integrity;

(E) Proof that the applicant has registered with the Department of Consumer and Regulatory Affairs to do business in the District of Columbia;

(F) An agreement or promise to be subject to all applicable taxes;

(G) An agreement or promise to comply with all of the requirements of this chapter and all orders and regulations of the Commission issued under this chapter; and

(H) Any other information required by the Commission.

(c) The Commission shall:

(1) Require an applicant to post a bond or other similar instrument if, in the Commission's judgment, the bond or similar instrument is necessary to insure an applicant's financial integrity;

(2) Establish the duration of a license issued under this section, procedures and requirements for license renewal, and provisions regarding the surrender and lapse of a license; and

(3) Establish any other requirements for an applicant that the Commission determines to be in the public interest.

(d) A license may not be transferred without the prior approval of the Commission.

(e) All monies collected by the Commission under this section shall be used exclusively for the daily operations of the Commission.

(f) Notwithstanding any other provision of this chapter, a consolidator may be required by the Commission to file a statement of intent to serve as a consolidator and to provide to the Commission such other information as reasonably may be related to the requirements of the Commission for monitoring the activities of consolidators.

(May 9, 2000, D.C. Law 13-107, § 105, 47 DCR 1091.)

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

§ 34-1506. Duties of the electric company.

(a)(1) The electric company shall provide distribution services to all customers and electricity suppliers on rates, terms of access, and conditions that are comparable to the electric company's own use of its distribution system. The electric company shall not operate its distribution system in a manner that favors the electricity supply of the electric company's affiliates.

(2) To the extent this provision is not preempted by federal law or regulation, the electric company shall provide transmission services to all customers and electricity suppliers on rates, terms, and conditions that are comparable to the electric company's own use of its transmission system.

(b) The electric company shall maintain the reliability of its distribution system in accordance with applicable orders, tariffs, and regulations of the Commission.

(May 9, 2000, D.C. Law 13-107, § 106, 47 DCR 1091.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Heat Wave Safety Temporary Amendment Act of 2007 (D.C. Law 17-33, October 18, 2007, law notification 54 DCR 10703).

For temporary (225 day) addition, see § 2 of Heat Wave Safety Temporary Amendment Act of 2008 (D.C. Law 17-242, October 21, 2008, law notification 55 DCR 11705).

For temporary (225 day) addition, see § 2 of Heat Wave Safety Temporary Amendment Act of 2009 (D.C. Law 18-80, December 8, 2009, law notification 57 DCR 2).

Section 2 of D.C. Law 19-35 added a section to read as follows: "Sec. 106a. Disconnection of service in extreme temperature prohibited.

"(a) The electric company shall not disconnect residential electric service during the day preceding, and the day of, a forecast of extreme temperature. If the forecast of extreme temperature precedes a holiday or weekend day, the electric company shall not disconnect residential electric service on any day during the holiday or weekend.

"(b) For the purposes of this section, the term "forecast of extreme temperature" means a National Weather Service forecast that the heat index for the District of Columbia will be 95 degrees Fahrenheit or above at any time during a day.".

Section 4(b) of D.C. Law 19-35 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2 of Heat Wave Safety Emergency Amendment Act of 2007 (D.C. Act 17-68, July 9, 2007, 54 DCR 6824).

For temporary (90 day) addition, see § 2 of Heat Wave Safety Emergency Amendment Act of 2008 (D.C. Act 17-439, July 16, 2008, 55 DCR 8288).

For temporary (90 day) addition, see § 2 of Heat Wave Safety Emergency Amendment Act of 2009 (D.C. Act 18-154, July 28, 2009, 56 DCR 6344).

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

§ 34-1507. Consumer protections.

(a)(1) Unless a customer consents in writing, a market participant or the electric company may not disclose information that:

(A) Is about the customer; and

(B) Was supplied to the market participant or electric company by the customer.

(2) This restriction shall not apply to lawful disclosures for bill collection or credit rating reporting purposes.

(b)(1) Unless a customer consents in writing, a market participant or the electric company may not use information of the type specified in subsection (a)(1) of this section for any purpose other than the purpose for which the information was originally acquired.

(2) This restriction shall not apply to lawful disclosures for bill collection or credit rating reporting purposes.

(c) Unless the customer consents, a market participant may not change a customer's electricity supplier.

(d) Unless the customer consents, a market participant may not add services or new charges to a customer's existing retail electric service options.

(e)(1) A market participant may not engage in marketing, advertising, or trade practices that are unfair, false, misleading, or deceptive.

(2) A market participant must provide adequate and accurate information to each customer about the market participant's available services and charges.

(f) A market participant may not discriminate against any customer based wholly or partly on the race, color, creed, national origin, sex, sexual orientation, or gender identity or expression of the customer, or for any arbitrary, capricious, or unfairly discriminatory reason.

(g) A market participant may not refuse to provide service to a customer except by the application of standards that are reasonably related to the market participant's economic and business purposes.

(h) A market participant shall post on the Internet information that is readily understandable about its services and rates for small commercial and residential electric customers.

(May 9, 2000, D.C. Law 13-107, § 107, 47 DCR 1091; June 25, 2008, D.C. Law 17-177, § 18(b), 55 DCR 3696.)

Effect of amendments. — D.C. Law 17-177, in subsec. (f), substituted "sexual orientation, or gender identity or expression" for "or sexual orientation".

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

Legislative history of Law 17-177. — For Law 17-177, see notes following § 32-401.

§ 34-1508. Investigation of violations, penalties for violations.

(a) For a violation of any provision of this chapter or a violation of any

regulation or order issued under this chapter, after notice and a hearing, the Commission may:

(1) Suspend or revoke a license of a market participant;

(2) Impose a civil penalty on a market participant or the electric company;

(3) Order a refund or credit to a customer;

(4) Cancel a contract or part of a contract between a customer and a market participant; or

(5) Issue a cease and desist order to a market participant or the electric company.

(b)(1) A civil penalty imposed by the Commission under this section shall not exceed $10,000 per violation.

(2) The Commission shall determine the amount of the civil penalty after considering:

(A) The number of previous violations on the part of the market participant or the electric company;

(B) The gravity and duration of the current violation; and

(C) The good faith of the market participant or the electric company in attempting to achieve compliance after notification of the violation.

(c) The Commission may temporarily suspend a license, issue a temporary cease and desist order, or take any other appropriate temporary remedial action, pending a final determination after notice and hearing, if the Commission determines that there is reasonable cause to believe that customers or the reliability of electric supply in the District of Columbia will be harmed by the actions of a market participant or the electric company.

(d) A proceeding under this section may be initiated by the Commission, the Office of the People's Counsel, the Office of the Corporation Counsel, or any aggrieved party.

(e) In connection with a proceeding under this section, a market participant or the electric company shall provide to the Commission access to any accounts, books, papers, and documents which the Commission considers necessary to resolve the matter.

(May 9, 2000, D.C. Law 13-107, § 108, 47 DCR 1091.)

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

§ 34-1509. Standard offer service.

(a) Standard offer service is electricity supply made available on and after the initial implementation date to:

(1) Customers not yet allowed to choose an electricity supplier under the phase-in of customer choice under § 34-1502;

(2) Customers who contract for electricity with an electricity supplier, but who fail to receive delivery of electricity under such contracts;

(3) Customers who cannot arrange to purchase electricity from an electricity supplier; and

(4) Customers who do not choose an electricity supplier.

(b)(1) Standard offer service shall be provided by the electric company from the initial implementation date through February 7, 2005.

(2)(A) The rate cap specified in subparagraph (B) of this paragraph shall apply beginning on the initial implementation date and shall end on February 7, 2005.

(B)(i) Subject to the time limitation in subparagraph (A) of this paragraph, and except for the charges specified in sub-subparagraph (ii) of this subparagraph, the total rate charged to a customer receiving standard offer service shall not exceed the total of the rates authorized by the Commission and charged to the customer on December 31, 1999.

(ii) The rate cap specified in sub-subparagraph (i) of this subparagraph shall not apply to charges imposed for the recovery of costs under § 34-1511.

(3)(A) During the period in which the rate cap specified in paragraph (2)(B) of this subsection is in effect, the Commission shall have the authority to set, in a manner that is just, reasonable, and non-discriminatory, the rate charged to a customer receiving standard offer service.

(B) The Commission shall ensure that any rate cut promulgated under paragraph (2) of this subsection does not hinder the development of a competitive market for electricity supply.

(4) During the period in which the rate cap specified in paragraph (2)(B) of this subsection is in effect, the Commission may allow the recovery of any extraordinary costs based on the circumstances of the electric company if the Commission determines that the action is necessary and in the public interest.

(c) Before January 2, 2004, the Commission shall adopt regulations or issue orders establishing terms and conditions for standard offer service and for the selection of an electricity supplier or suppliers (retail, wholesale, or both) to provide standard offer service after February 7, 2005. The terms and conditions applicable to the selection of an electricity supplier or suppliers shall include:

(1) Protection against a standard offer service provider's failure to provide service;

(2) An appropriate rate design, subject to the restrictions in subsection (d) of this section;

(3) The appropriate length of a standard offer service contract awarded under subsection (d) of this section; and

(4) A contingency plan in the event of insufficient or inadequate bids; provided, that a contingency plan may award the standard offer service to the electric company or an affiliate of the electric company if it is in the public interest.

(d)(1) After the regulations or orders mandated by subsection (c) of this section are issued, the Commission shall conduct competitive bid procedures for the selection of a retail electricity supplier or suppliers to provide standard offer service for the District of Columbia after February 7, 2005; authorize the electric company, as a wholesale electricity supplier, to conduct competitive bid procedures to obtain third-party contracts to provide standard offer service for the District of Columbia after February 7, 2005; or both. If competitive bid

procedures for the selection of a retail electricity supplier or suppliers to provide standard offer service are conducted by the Commission, the competitive selection of retail electricity supplier or suppliers to provide standard offer service shall occur before July 2, 2004. In conducting retail bid procedures or facilitating the wholesale bid process under this subsection, the Commission:

(A) Shall ensure that the price for standard offer service will not hinder the development of a competitive electricity supply market in the District of Columbia; and

(B) May, in its discretion, solicit the payment, by the retail electricity supplier or suppliers chosen to provide standard offer service, of a bid premium.

(2) Any bid premium collected by the Commission under this section shall be deposited into the Reliable Energy Trust Fund established under § 34-1514 [repealed].

(e) The Commission shall determine the threshold financial viability of wholesale bidders.

(May 9, 2000, D.C. Law 13-107, § 109, 47 DCR 1091; Mar. 30, 2004, D.C. Law 15-113, § 2(b), 51 DCR 1349.)

Effect of amendments. — D.C. Law 15-113, in subsec. (b), substituted "February 7, 2005" for "January 1, 2005" in pars. (1) and (2)(A); rewrote subsecs. (c) and (d)(1); and added subsec. (e).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of Electric Standard Offer Service Emergency Amendment Act of 2003 (D.C. Act 15-276, December 18, 2003, 50 DCR 47).

For temporary (90 day) amendment of section, see § 2(b) of Electric Standard Offer Service Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-400, March 18, 2004, 50 DCR 3636).

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

Legislative history of Law 15-113. — For Law 15-113, see notes following § 34-1501.

§ 34-1510. Transition costs, transition benefits.

(a) The electric company shall be provided an opportunity to recover all of its prudently incurred and verifiable net transition costs, subject to full mitigation, following the Commission's determination under subsection (b) of this section. In connection with the foregoing:

(1) A competitive transition charge, or other appropriate non-bypassable mechanism as determined by the Commission, may be included as part of the charge paid by every customer accessing the transmission or distribution system of the electric company.

(2) The competitive transition charge may be included on bills to customers for a period of limited duration to be determined by the Commission.

(3) The Commission may establish recovery periods of different lengths for different categories of transition costs.

(b)(1) The Commission shall determine the transition costs and the amount of the costs that the electric company may recover.

(2) In determining the electric company's transition costs, the Commission shall:

(A) Conduct public hearings; and

(B) Consider evidence appropriate to an accurate determination of the electric company's transition costs. Such evidence may include:

(i) Book value and fair market value;

(ii) Auctions and sales of comparable assets;

(iii) Appraisals;

(iv) The revenue the company would receive under rate-of-return regulation;

(v) The revenue the company would receive in a restructured electricity supply market; and

(vi) Computer simulations provided to the Commission.

(3) If the Commission determines that the electric company will incur transition costs, the Commission shall determine the extent of the permitted recovery based on the following factors:

(A) The prudence of the original investment and of the continued management of the investment;

(B) Whether the investment was mandated by law, regulation, or order;

(C) Whether the amount at issue has been fully verified and minimized;

(D) Whether the investment continues to be used and useful;

(E) Whether the loss is one of which investors can be said to have reasonably borne the risk;

(F) Whether investors have already been compensated for the risk;

(G) The financial integrity of the electric company;

(H) Whether the investment was made to satisfy the need to ensure the availability of reliable electric service;

(I) For costs incurred or to be incurred as a result of electric industry restructuring or the establishment of customer choice, whether the costs are reasonable; and

(J) The impact of a recovery of transition costs on the development of effective competition in the market for electricity supply or billing, or the market for any component of electric service declared by the Commission to be a potentially competitive service.

(c) The Commission shall establish procedures for an annual review of actual market conditions to determine if the authorized competitive transition charge is overcompensating or undercompensating the electric company for the transition costs established under subsection (b)(3) of this section. If an annual review demonstrates that the authorized competitive transition charge is overcompensating or undercompensating the electric company for the transition costs established under subsection (b)(3) of this section, the Commission shall adjust the competitive transition charge accordingly.

(May 9, 2000, D.C. Law 13-107, § 110, 47 DCR 1091.)

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

§ 34-1511. Recovery for public purpose programs.

(a)(1) The electric company may make an application to the Commission to recover all costs that have been or will be incurred by the electric company

under public purpose programs established by law or ordered by the Commission, including the consumer education program established under § 34-1504. To the extent the costs are determined by the Commission to be just and reasonable, the Commission shall allow the electric company to recover the costs.

(2) In determining whether an electric company should be permitted to recover costs described in paragraph (1) of this subsection, the Commission shall ensure that such costs:

(A) Have not been or will not be recovered through rates charged by the electric company;

(B) Have not been or will not be recovered through the sale of any or all of the electric company's generation assets; or

(C) Have not or will not be recovered through a competitive transition charge imposed under § 34-1510.

(b) All costs recoverable under this section may be recovered through a surcharge or other appropriate cost recovery mechanism to be determined by the Commission.

(May 9, 2000, D.C. Law 13-107, § 111, 47 DCR 1091.)

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

§ 34-1512. Market power remediation.

(a) The Commission and the Office of the People's Counsel shall monitor the District of Columbia retail markets for electricity supply and services declared by the Commission to be potentially competitive services to ensure that the markets are not being adversely affected by anticompetitive conduct and anticompetitive conditions.

(b)(1) If, as a result of the monitoring efforts required by subsection (a) of this section or as a result of a complaint filed by an interested party, the Commission determines that the District of Columbia retail markets for electricity supply or services declared by the Commission to be potentially competitive services are being adversely affected by anticompetitive conduct or anticompetitive conditions that result from transmission constraints or load pockets, the Commission may take remedial action, including the imposition of price caps or other price restrictions, to remedy the impact of the anticompetitive conduct or anticompetitive conditions.

(2)(A) If, as a result of the monitoring efforts required by subsection (a) of this subsection, the Commission or the Office of the People's Counsel obtain evidence that the retail markets for electricity supply or services declared by the Commission to be potentially competitive services are being affected by anticompetitive conduct or anticompetitive conditions other than the anticompetitive conduct or anticompetitive conditions described in paragraph (1) of this subsection, the Commission or the Office of the People's Counsel shall transmit the evidence to the Office of the Corporation Counsel, the Department of Justice, the Federal Trade Commission, and any other appropriate federal agency.

(B) Within 6 months of the transmittal of evidence by the Commission or the Office of the People's Counsel under subparagraph (A) of this paragraph, the Office of the Corporation Counsel shall issue a report to the Council of the District of Columbia explaining the course of its investigation, the actions that it has taken or plans to take, and the reasons for those actions. The failure of the Office of the Corporation Counsel to bring an action within 6 months of the receipt of the transmittal shall not be deemed to eliminate the Office of the Corporation Counsel's otherwise existing authority to act. Any report submitted under this subsection shall not include any information which may compromise any investigation.

(c) Nothing in this section shall affect the authority of the Office of the Corporation Counsel to investigate or take action against anticompetitive conduct or anticompetitive conditions on its own initiative.

(d)(1) The Commission is authorized to participate in any meetings convened or organizations formed for the purpose of monitoring and preventing the acquisition or exercise of market power in the regional transmission system serving the District of Columbia.

(2) The Commission is authorized to enter into an agreement with state regulatory agencies, independent system operators, and other parties for the purpose of monitoring and preventing the acquisition or exercise of market power in the regional transmission system serving the District of Columbia.

(May 9, 2000, D.C. Law 13-107, § 112, 47 DCR 1091.)

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

§ 34-1513. Provision of electricity supply by the electric company.

(a) Other than its provision of standard offer service, the electric company shall not engage in the business of an electricity supplier in the District of Columbia except through an affiliate.

(b) An affiliate of the electric company must obtain a license under § 34-1505 to engage in the business of an electricity supplier in the District of Columbia.

(c) The Commission shall develop a code of conduct between the electric company and its affiliate which establishes functional, operational, structural, and legal separation between the electric company and the affiliate, and which prevents the electric company from subsidizing the activities of the affiliate. The code of conduct required by this subsection shall include the following protections:

(1) A prohibition on the release of proprietary customer information from the electric company to the affiliate;

(2) A prohibition on the use by the affiliate of office space owned and used by the electric company;

(3) A prohibition on the sharing of employees by the electric company and the affiliate;

(4) A requirement that the electric company and the affiliate maintain separate books and records; and

(5) A requirement that the electric company and the affiliate allocate and account for all shared corporate services.

(May 9, 2000, D.C. Law 13-107, § 113, 47 DCR 1091.)

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

§ 34-1514. Reliable Energy Trust Fund; public purpose programs. [Repealed].

Repealed.

(May 9, 2000, D.C. Law 13-107, § 114, 47 DCR 1091; Apr. 12, 2005, D.C. Law 15-342, § 304(b), 52 DCR 2346; Sept. 18, 2007, D.C. Law 17-20, § 2072, 54 DCR 7052; Oct. 22, 2008, D.C. Law 17-250, § 212(a)(1), 55 55 DCR 9225.)

Effect of amendments. — D.C. Law 15-342, in subsec. (b)(2)(C), substituted "kilowatt-hour, but shall not be less than $.0001 per kilowatt hour. Collection shall commence as of February 1, 2005." for "kilowatt-hour."; and added subsec. (e).

D.C. Law 17-20, in subsec. (a)(4), substituted "programs, including research, reports, and studies, " for "programs"; and, in subsec. (c), added pars. (2)(B)(iii-I) and (4).

Emergency legislation. — For temporary (90 day) amendment of section, see § 304(b) of Omnibus Utility Emergency Amendment Act of 2005 (D.C. Act 16-12, January 28, 2005, 52 DCR 2945).

For temporary (90 day) amendment of section, see § 2072 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) repeal of section, see § 212(a) of Clean and Affordable Energy Emergency Act of 2008 (D.C. Act 17-508, September 25, 2008, 55 DCR 10856).

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

Legislative history of Law 15-342. — For Law 15-342, see notes following § 34-401.

Legislative history of Law 17-20. — Law 17-20, the "Fiscal Year 2008 Budget Support Act of 2007", was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Legislative history of Law 17-250. — For Law 17-250, see notes following § 34-804.

Short title. — Short title: Section 2071 of D.C. Law 17-20 provided that subtitle H of title II of the act may be cited as the "Reliable Energy Trust Fund Amendment Act of 2007".

§ 34-1515. Aggregation programs.

(a)(1) The Mayor may develop and administer a municipal aggregation program for the purchase of electricity supply and electricity supply services by District of Columbia ratepayers.

(1A)(A) There is established a fund designated as the Municipal Aggregation Fund, which shall be separate from the General Fund of the District of Columbia and shall be used solely to pay the costs of the formation and administration of municipal aggregation contracts of the District. The funds collected under subparagraph (B) of this paragraph, and all interest earned on those funds, shall be deposited into the Fund without regard to fiscal year limitation pursuant to an act of Congress. All funds deposited into the Fund shall not revert to the General Fund of the District of Columbia at the end of

any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in this subparagraph, subject to authorization by Congress.

(B) The Mayor may charge an administrative fee under any municipal aggregation contract entered into by the District.

(2) The Mayor, in conjunction with the Commission, shall issue regulations governing a municipal aggregation program implemented under this section.

(b)(1) The Office of the People's Counsel shall assist any person seeking to implement a customer-based aggregation program. The assistance shall include help in understanding the technical and economic issues involved in purchasing electricity supply, electricity supply services, or any other service determined by the Commission to be a potentially competitive service.

(2) The Commission may adopt any reasonable regulations relating to customer-based aggregation programs that it determines to be in the public interest.

(c) Nothing in this section shall prohibit the development and implementation of aggregation programs during the implementation of pilot programs.

(May 9, 2000, D.C. Law 13-107, § 115, 47 DCR 1091; Mar. 2, 2007, D.C. Law 16-192, § 2082, 53 DCR 6899; Sept. 18, 2007, D.C. Law 17-20, § 2022, 54 DCR 7052.)

Effect of amendments. — D.C. Law 16-192 added subsec. (a)(1A).

D.C. Law 17-20, in subsec. (a)(1A)(B), deleted ", not to exceed $85,000," following "fee".

Emergency legislation. — For temporary (90 day) amendment of section, see § 2082 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2082 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2082 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2022 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

Legislative history of Law 16-192. — Law 16-192, the "Fiscal Year Budget Support Act of 2006", was introduced in Council and assigned Bill No. 16-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 9, 2006, and June 6, 2006, respectively. Signed by the Mayor on August 8, 2006, it was assigned Act No. 16-476 and transmitted to both Houses of Congress for its review. D.C. Law 16-192 became effective on March 2, 2007.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 34-1514.

Short title. — Short title: Section 2081 of D.C. Law 16-192 provided that subtitle G of title II of the act may be cited as the "Municipal Aggregation Fund Amendment Act of 2006".

Short title: Section 2021 of D.C. Law 17-20 provided that subtitle C of title II of the act may be cited as the "Municipal Aggregation Fund Amendment Act of 2007".

Delegation of Authority. — Delegation of authority-Retail Electric Competition and Consumer Protection Act of 1999, see Mayor's Order 2007-56, February 9,

§ 34-1516. New generating facilities in the District of Columbia.

No person shall construct an electric generating facility for the purpose of the retail or wholesale sale of electricity unless the Commission first deter-

mines, after notice and a hearing, that the construction of the electric generating facility is in the public interest.

(May 9, 2000, D.C. Law 13-107, § 116, 47 DCR 1091.)

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

§ 34-1517. Renewable energy sources.

(a) For the purposes of this section, "renewable energy source" means one of the following sources of energy:

(1) Solar;
(2) Wind;
(3) Tidal;
(4) Geothermal;
(5) Biomass;
(6) Hydroelectric facilities; and
(7) Digester gas.

(b) Every 6 months after the initial implementation date, each licensed electricity supplier doing business in the District of Columbia shall report to the Commission on the fuel mix of the electricity sold by the electricity supplier, including categories of electricity from coal, natural gas, nuclear, oil, hydroelectric, solar, biomass, wind, and other resources, and on the percentage of electricity sold by the electricity supplier which comes from renewable energy sources.

(c)(1) Beginning on the initial implementation date, the Commission shall track the fuel mix of the electricity sold in the District of Columbia and the amount of electricity from renewable sources sold in the District of Columbia.

(2) Before July 1, 2003, and every 2 years after that date, the Commission shall provide a report to the Council on the overall fuel mix of the electricity sold in the District of Columbia, the amount of electricity sold in the District of Columbia which comes from renewable energy sources, and on the feasibility of requiring each licensed electricity supplier doing business in the District of Columbia to provide a minimum percentage of electricity sold from renewable energy sources.

(May 9, 2000, D.C. Law 13-107, § 117, 47 DCR 1091.)

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

§ 34-1518. Net metering.

(a) The Commission may establish a program which affords eligible customer-generators the opportunity to participate in net energy metering.

(b) Any net energy metering program established by the Commission shall be subject to the following:

(1) The program may include, as the Commission determines will facilitate the provision of net energy metering, requirements for:

(A) Retail sellers;

(B) Owners or operators of distribution or transmission facilities;

(C) Providers of default service; or

(D) Eligible customer-generators.

(2) The Commission shall ensure that the metering equipment installed for net metering shall be capable of measuring the flow of electricity in 2 directions, and shall allocate fairly the cost of such equipment and any necessary interconnection. An eligible customer-generator's net metering system for renewable resources, cogeneration, fuel cells, and microturbines shall meet all applicable safety and performance standards. The Commission may adopt by regulation additional control and testing requirements for customer-generators that the Commission determines are necessary to protect public safety and system reliability.

(3) If the electricity supplied by an electricity supplier exceeds the electricity generated by the customer-generator and fed back into the electric grid during the billing period, the customer-generator shall be billed for the net electricity supplied by the electricity supplier in accordance with net metering rules established by the Commission.

(4) If electricity generated by the customer-generator and fed back into the electric grid exceeds the electricity supplied by the electricity supplier, the customer generator may receive compensation based on the net metering rules established by the Commission.

(May 9, 2000, D.C. Law 13-107, § 118, 47 DCR 1091.)

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

§ 34-1519. Sale of generation assets.

(a) In overseeing a sale by the electric company of any or all of its generation assets, the Commission shall ensure that the sale:

(1) Will not affect the reliability of the electricity supply in the District of Columbia in a deregulated electricity supply market; and

(2) Will minimize market power problems in a deregulated electricity supply market.

(b)(1) The electric company shall not sell any of its generation assets to an affiliate of the electric company.

(2)(A) By the initial implementation date, the electric company shall transfer at book value any unauctioned generation assets to an affiliate of the electric company.

(B) Relations between the affiliate identified in subparagraph (A) of this paragraph and the electric company shall be governed by a code of conduct to be issued by the Commission, which establishes functional, operational, structural, and legal separation between the electric company and the affiliate and prevents the electric company from subsidizing the activities of the affiliate. The code of conduct required by this subsection shall include the following protections:

(i) A prohibition on the release of proprietary customer information from the electric company to the affiliate;

(ii) A prohibition on the use by the affiliate of office space owned or used by the electric company;

(iii) A prohibition on the sharing of employees by the electric company and the affiliate;

(iv) A requirement that the electric company and the affiliate maintain separate books and records; and

(v) A requirement that the electric company and the affiliate allocate and account for all shared expenses.

(c)(1) Beginning on the initial implementation date, the electric generating facility at Benning Road in the District of Columbia may only be dispatched by PJM, or must run for local reliability, thus ensuring the reliability of electricity supply in the District of Columbia.

(2) Beginning on the initial implementation date, the electric generating facility at Buzzard's Point in the District of Columbia may only be dispatched by PJM, or must run for local reliability, thus ensuring the reliability of electricity supply in the District of Columbia.

(d) Within 2 years after a sale by the electric company of its electric generating facilities at Benning Road and Buzzard's Point in the District of Columbia, the Commission shall report to the Council on the feasibility of decommissioning those electric generating facilities.

(May 9, 2000, D.C. Law 13-107, § 119, 47 DCR 1091.)

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

§ 34-1520. Conformity with settlement agreements.

Nothing in this chapter shall be deemed to require the Commission to modify, set aside, or otherwise adjust the terms of a settlement approved by the Commission in Formal Case No. 945. To the extent the existence of a settlement obviates the need for proceedings or findings as are referred to in this chapter, the Commission may dispense with the proceedings or findings.

(May 9, 2000, D.C. Law 13-107, § 120, 47 DCR 1091.)

Legislative history of Law 13-107. — For Law 13-107, see notes following § 34-1501.

SUBTITLE IIIA. ELECTRICAL AND NATURAL GAS METERING.

CHAPTER 15A. INSTALLATION OF SUBMETERING EQUIPMENT.

Sec.
34-1551. Definitions.
34-1552. Commission to promulgate rules, including standards.
34-1553. Energy submetering and energy allocation equipment.

§ 34-1551. Definitions.

For the purposes of this chapter, the term:

(1) "Building" means all of the individual units served through the same utility-owned meter within a property defined as Class 2 Property under § 47-813(c-6).

(2) "Building owner, operator, or manager" means any person or entity responsible for the operation and management of a building.

(3) "Commission" means the Public Service Commission.

(4) "Energy allocation equipment" means any device, other than submetering equipment, used to determine approximate electric or natural gas usage for any nonresidential rental unit within a building.

(5) "Electricity supplier" shall have the same meaning as in § 34-1501(17).

(6) "Natural gas supplier" shall have the same meaning as in § 34-1671.02(12).

(7) "Nonresidential rental unit" means real property leased for commercial purposes.

(8) "Owner-paid areas" means the portion of the real property for which the owner bears financial responsibility for energy costs, which portions include areas outside individual units or in owner-occupied or shared areas.

(9) "Public utility," "utility," or "utility company" shall have the same meaning as in § 34-214.

(10) "Submetering equipment" means equipment used to measure actual electricity or natural gas usage in any nonresidential rental unit when the equipment is not owned or controlled by the electric or natural gas utility serving the building in which the nonresidential rental unit is located.

(Oct. 22, 2008, D.C. Law 17-250, § 701, 55 DCR 9225.)

Emergency legislation. — For temporary (90 day) addition, see § 701 of Clean and Affordable Energy Emergency Act of 2008 (D.C. Act 17-508, September 25, 2008, 55 DCR 10856).

Legislative history of Law 17-250. — Law 17-250, the "Clean and Affordable energy Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-492 which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 1, 2008, and July 15, 2008, respectively. Signed by the Mayor on August 4, 2008, it was assigned Act No. 17-497 and transmitted to both Houses of Congress for its review. D.C. Law 17-250 became effective on October 22, 2008.

Editor's notes. — Section 801 of D.C. Law 17-250 provided: "Sec. 801. Applicability. This act shall apply on the later of October 1, 2008, or the effective date of this act."

§ 34-1552. Commission to promulgate rules, including standards.

(a) The Commission shall promulgate rules, including standards, under which any owner, operator, or manager of a building which is not individually metered for electricity or gas for each nonresidential rental unit may install submetering equipment or energy allocation equipment for the purpose of fairly allocating:

(1) The cost of electrical or gas consumption for each nonresidential rental unit; and

(2) Electrical or gas demand and customer charges made by the utility and electricity and natural gas supplier.

(b) In addition to other appropriate safeguards for the tenant, the rules shall require that a building owner, operator, or manager:

(1) Shall not impose on the tenant any charges over and above the cost per kilowatt hour, cubic foot or therm, plus demand and customer charges, where applicable, which are charged by the utility company, the electricity supplier, and natural gas supplier to the building owner, operator, or manager, including any sales, local utility, or other taxes, if any; provided, that additional service charges permitted by § 34-1553 may be collected to pay administrative costs and billing; and

(2) Shall maintain adequate records regarding submetering and energy allocation equipment and shall make such records available for inspection by the Commission during reasonable business hours.

(c)(1) For the purposes of Commission enforcement of the rules adopted under this section, building owners, operators, or managers shall be treated as public utilities for the purposes of making a complaint under § 34-917 and any rules governing the making of complaints adopted under § 34-902.

(2) All submetering equipment shall be subject to the same rules, including standards, established by the Commission for accuracy, testing, and recordkeeping of meters installed by electric or gas utilities and shall be subject to the meter requirements of § 34-303.

(3) All energy allocation equipment shall be subject to rules, including standards established by the Commission to ensure that such systems result in a reasonable determination of energy use and the resulting costs for each nonresidential rental unit.

(4) Violations of Commission rules and orders issued under this section shall be subject to the penalty provisions set forth in §§ 34-708 and 34-731.

(d) In implementing this section, no building owner, operator, or manager shall be considered a public utility engaged in the business of distributing or reselling electricity or gas except as provided in subsection (c) of this section. The building owner, operator, or manager may use submetering or energy allocation equipment solely to allocate the costs of electric or gas service fairly among the tenants using the building.

(Oct. 22, 2008, D.C. Law 17-250, § 702, 55 DCR 9225.)

Emergency legislation. — For temporary (90 day) addition, see § 702 of Clean and Affordable Energy Emergency Act of 2008 (D.C. Act 17-508, September 25, 2008, 55 DCR 10856).

Legislative history of Law 17-250. — For Law 17-250, see notes following § 34-1551.

§ 34-1553. Energy submetering and energy allocation equipment.

(a) Energy submetering equipment or energy allocation equipment may be used in a building if it is authorized in the rental agreement or lease for the nonresidential rental unit. All energy submetering equipment and energy allocation equipment shall meet the requirements and standards established and enforced by the Commission pursuant to subsection (b) of this section.

(b)(1) If energy submetering equipment or energy allocation equipment is used in any building, the building owner, operator, or manager shall bill the tenant for electricity or natural gas for the same billing period as the utility, the electricity supplier, or the natural gas supplier serving the building, unless the rental agreement or lease expressly provides otherwise.

(2) A late payment charge shall not be imposed on all amounts, including deferred payment installments, paid by the due date or on amounts in dispute before the Commission. Amounts paid after the due date shall bear a late payment charge of 1%, and an additional late payment charge at the rate of 1½% on the remaining unpaid balance per billing month thereafter.

(c) Energy allocation equipment shall be tested periodically under Commission rules by the building owner, operator, or manager. Upon the request by a tenant, the building owner, operator, or manager shall test the energy allocation equipment without charge. The test shall be conducted without charge to the tenant and shall not be conducted more frequently than once in a 24-month period for the same tenant. The tenant or his designated representative may be present during the testing of the energy allocation equipment. A written report of the results of the test shall be made to the tenant within 10 business days after the completion of the test.

(d) A building owner, operator, or manager shall maintain adequate records regarding energy submetering equipment or energy allocation equipment. A tenant may inspect and copy the records for the nonresidential unit during reasonable business hours at a convenient location within the building. The building owner, operator, or manager may impose and collect a reasonable charge for copying documents, reflecting the actual costs of materials and labor for copying, prior to providing copies of the records to the tenant.

(e) Notwithstanding any enforcement action undertaken by the Commission pursuant to its authority under § 34-1552, tenants and owners, operators, or managers shall retain any private right of action resulting from any breach of the rental agreement or lease terms required by this section or § 34-1552.

(Oct. 22, 2008, D.C. Law 17-250, § 703, 55 DCR 9225.)

Emergency legislation. — For temporary (90 day) addition, see § 703 of Clean and Affordable Energy Emergency Act of 2008 (D.C. Act 17-508, September 25, 2008, 55 DCR 10856).

Legislative history of Law 17-250. — For Law 17-250, see notes following § 34-1551.

CHAPTER 15B. ADVANCED METERING INFRASTRUCTURE.

Sec.
34-1561. Definitions.
34-1562. Authorization of Advanced Metering Infrastructure implementation (Smart Grid) and cost recovery.

§ 34-1561. Definitions.

For purposes of this chapter, the term:

(1) "Advanced Metering Infrastructure" or "AMI" means a system capable of providing 2-way communication with metering equipment to gather at least hourly energy consumption data on a daily basis for all customers.

(2) "ARRA" means the American Recovery and Reinvestment Act of 2009, approved February 17, 2009 (123 Stat. 115; 26 U.S.C. § 1, note).

(3) "Commission" means the Public Service Commission.

(4) "Customer" shall have the same meaning as set forth in § 34-1501(12).

(5) "Electric company" shall have the same meaning as set forth in § 34-207.

(6) "Meter Data Management System" means a system that provides a single data repository which can gather data from multiple metering systems and then supply that data to multiple applications such as billing, forecasting, customer service, system operation and maintenance.

(7) "Regulatory asset" means specific costs that a public utility may defer to its balance sheet and accrue earnings thereon at its authorized rate of return.

(8) "Smart Grid" means the installation of advanced technology to enhance the operation of the electric distribution and transmission system.

(Mar. 3, 2010, D.C. Law 18-111, § 2161, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 2 of Advanced Metering Infrastructure Implementation and Cost Recovery Authorization Emergency Act of 2009 (D.C. Act 18-107, June 18, 2009, 56 DCR 4929).

For temporary (90 day) additions, see §§ 2001, 2002 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) addition, see § 2161 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 2161 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — Law 18-111, the "Fiscal Year 2010 Budget Support Act of 2009", was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Short title. — Short title: Section 2160 of D.C. Law 18-111 provided that subtitle Q of title II of the act may be cited as the "Advanced Metering Infrastructure Implementation and Cost Recovery Authorization Act of 2009".

§ 34-1562. Authorization of Advanced Metering Infrastructure implementation (Smart Grid) and cost recovery.

(a) The electric company may implement an Advanced Metering Infrastructure for all consumers, provided, that the electric company obtains a sufficient amount of federal funds for AMI implementation under the ARRA. The sufficiency of the amount of the federal funds obtained shall be determined by the Commission. The Commission shall make a determination of the sufficiency of federal funds obtained within no more than 60 days after the receipt of notice from the electric company of the amount of federal funds awarded.

(b) The electric company may establish a regulatory asset for the costs, net of the amount of the ARRA funds received, including depreciation and amortization expense, incurred by the electric company between base rate cases for the implementation of Advanced Metering Infrastructure, including the amortization expense of the Meter Data Management System, the depreciation expense on the AMI meters, and the undepreciated net book costs of the meters replaced by the AMI meters. The regulatory asset shall accrue a return at the electric company's authorized rate of return on the balance in the regulatory asset.

(c) The creation of a regulatory asset for Advanced Metering Infrastructure shall not affect the authority of the Commission to review the prudence of costs associated with implementation of AMI. In any Commission proceeding reviewing the costs, the electric company shall have the burden to prove that all of the costs have been prudently incurred.

(d) The electric company shall net any utility cost savings resulting from AMI deployment from the regulatory asset.

(Mar. 3, 2010, D.C. Law 18-111, § 2162, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 3 of Advanced Metering Infrastructure Implementation and Cost Recovery Authorization Emergency Act of 2009 (D.C. Act 18-107, June 18, 2009, 56 DCR 4929).

For temporary (90 day) addition, see § 2003 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) addition, see § 2162 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 2162 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 34-1561.

SUBTITLE IV. NATURAL GAS.

CHAPTER 16. GAS COMPANIES.

Sec.
34-1601. Inspector of Gas and Meters.
34-1602. Laboratory for testing gas of Washington Gas Light Company.
34-1603. Additional laboratories for testing gas of Washington Gas Light and Georgetown Gas Light Companies.
34-1604. Officer of company may be present at tests.
34-1605. Daily inspections.
34-1606. Removal of gas meters for neglect or refusal to pay amount due.
34-1607. Annual reports to Congress.
34-1608. Maximum rates for gas; additional charge for nonpayment of bills.

§ 34-1601. Inspector of Gas and Meters.

A suitable and impartial person, competent as a chemist, who is not a stockholder or employee in any gas works, shall be appointed by the Public Service Commission to be designated and known as Inspector of Gas and Meters, whose duties shall be to test and determine the illuminating power and purity of the gas furnished by any company, person, or persons in the District of Columbia; and to test, prove, and seal all meters that may be hereafter used by them. The Inspector shall give bond to the extent of double his annual salary, and shall take an oath or affirmation, before some officer legally qualified to administer the same, that he will faithfully, diligently, and impartially discharge the duties of his office.

(June 23, 1874, 18 Stat. 278, 279, ch. 480, §§ 2, 10; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21.)

Prior Codifications. — 1981 Ed., § 43-1005. 1973 Ed., § 43-605.

§ 34-1602. Laboratory for testing gas of Washington Gas Light Company.

A laboratory shall be provided and fitted up by the Washington Gas Light Company, subject to the approval of the Public Service Commission, in the central part of the City of Washington, at a distance as near as may be, of 2,000 feet from any gasworks, and furnished with suitable apparatus for the transaction of the business of the Inspector and Assistant Inspectors of Gas and Meters, for which it is intended, and the laboratory shall be kept open on all business days between the hours of 9:00 a.m. and 4:00 p.m.; provided, that the cost of fitting up said laboratory shall be paid for by each gas company in the District of Columbia in proportion to their sale of gas for the year 1873.

(June 23, 1874, 18 Stat. 278, ch. 480, § 3; Mar. 3, 1893, 27 Stat. 543, ch. 199; Mar. 11, 1902, 32 Stat. 63, ch. 181; Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21.)

Cross references. — Gas and electric meters, inspections, rules and regulations, see § 34-303.

Prior Codifications. — 1981 Ed., § 43-1101.

1973 Ed., § 43-1201.

§ 34-1603. Additional laboratories for testing gas of Washington Gas Light and Georgetown Gas Light Companies.

Two additional laboratories shall be provided and fitted up by the Washington Gas Light Company, subject to the approval of the Mayor of the District of Columbia, and shall be furnished with suitable apparatus, to the satisfaction of the said Mayor, at a total cost not to exceed $1,000, for inspecting and testing the illuminating gas manufactured and distributed by the said Washington Gas Light Company and the gas meters used for measuring the gas supplied to consumers by the said Washington Gas Light Company. One of the said laboratories shall be located in the northwestern portion of the City of Washington and the other in the southeastern portion of said city, and the cost of providing and fitting up the said laboratories shall be paid for by the said Washington Gas Light Company. A laboratory shall be provided and fitted up by the Georgetown Gas Light Company, subject to the approval of the Mayor of the District of Columbia, and shall be furnished with suitable apparatus, to the satisfaction of the said Mayor at a total cost not to exceed $1,000, for inspecting and testing the illuminating gas manufactured and distributed by the said Washington Gas Light Company and the gas meters used for measuring the gas supplied to consumers by the said Georgetown Gas Light Company; provided, that the cost of providing and fitting up the said laboratory shall be paid by the said Georgetown Gas Light Company; provided further, that the Washington Gas Light Company and the Georgetown Gas Light Company shall, at the beginning of each fiscal year, in proportion to their respective receipts from sales of gas for the fiscal year immediately preceding, provide in advance, by depositing with the Collector of Taxes of the District of Columbia, a sum sufficient to pay the necessary expenses of maintaining the service of inspecting and testing illuminating gas and gas meters, herein provided for, as estimated by the Mayor of the District of Columbia, and not to exceed $500 per annum for each of the said additional laboratories.

(Mar. 3, 1893, 27 Stat. 543, ch. 199.)

Prior Codifications. — 1981 Ed., § 43-1102.

1973 Ed., § 43-1202.

Editor's notes. — Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue

under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1604. Officer of company may be present at tests.

The company, person or persons furnishing the gas may, if they see fit, on each occasion of the testing of the gas by the Inspector, be represented by some officer, but such officer shall not interfere in the testing.

(June 23, 1874, 18 Stat. 278, ch. 480, § 4; July 1, 1882, 22 Stat. 138, ch. 263, § 1.)

Prior Codifications. — 1981 Ed., § 43-1103.
1973 Ed., § 43-1203.

§ 34-1605. Daily inspections.

Daily inspections, Sundays excepted, shall be made at any time after 12:00 noon and before 12:00 midnight, in the discretion of the Inspector of Gas and Meters.

(June 23, 1874, 18 Stat. 278, ch. 480, § 5; Mar. 3, 1893, 27 Stat. 543, ch. 199.)

Cross references. — Gas and electric corporations, Public Service Commission powers and duties, see § 34-301.

Prior Codifications. — 1981 Ed., § 43-1104.
1973 Ed., § 43-1204.

§ 34-1606. Removal of gas meters for neglect or refusal to pay amount due.

If any person or persons, supplied with gas, neglect or refuse to pay the amount due for the same, such company may stop the gas from entering the premises of such person or persons. In no case shall the officers, servants, or workmen of the company remove a meter from premises supplied by the company, unless by consent of the consumer, without first giving 48 hours notice in writing by leaving the same at the premises of the consumers; and said removal shall take place only between the hours of 8:00 a.m. and 2:00 p.m.

It shall be lawful for Congress at any time hereafter to alter, amend, or repeal this section.

(June 23, 1874, 18 Stat. 280, ch. 480, §§ 13, 14.)

Cross references. — Gas and electric corporations, excessive charges defense, see § 34-304.

Prior Codifications. — 1981 Ed., § 43-1105.
1973 Ed., § 43-1205.

CASE NOTES

In general.

Although it is true that gas company employee cannot with impunity forcibly enter customer's premises to read meters, and cannot regain possession of gas meter in other than peaceable manner, arbitrary refusal by customer to permit entrance is wrongful. D.C. Code § 43-1205. Jackson v. United States, 385 A.2d 786, 1978 D.C. App. LEXIS 510 (1978).

Under terms of gas company's tariff with Public Service Commission granting gas company's employees privilege to enter customer's home to gain access to gas meter for legitimate company purposes, if entry is nonforcible, there is no trespass, and as long as employee does not go beyond his privileged entry, he may not be ejected. D.C. Code § 43-1205. Jackson v. United States, 385 A.2d 786, 1978 D.C. App. LEXIS 510 (1978).

§ 34-1607. Annual reports to Congress.

Any association or corporation engaged in the manufacture and sale of gas for illuminating and fuel purposes in the District of Columbia, through its president or other duly authorized officer, shall make a sworn statement to Congress annually, on or before the 1st day of February in each year. Said report shall contain a detailed statement of the condition of the business of said association or corporation for the year ending December 31st next preceding, and such statement shall set forth the actual cost and also present value of the property of such association or corporation used in the conduct of its business, the amount of paid-up capital stock, the amount and character of the indebtedness of such association or corporation, the amount and cost of materials used in making gas, the amount of gas manufactured, the amount of gas sold, the average price per 1,000 cubic feet received for gas sold, the revenue from the sale of all by-products, the revenues from all other sources, the extensions and improvements made in the plant and works, the actual cost of the same, the amount expended for labor, the amount set aside for depreciation, the amount set apart for insurance and renewals, the amount paid out of earnings for betterments, the amount paid for betterments from other sources, the amount set aside and paid in interest and dividends, the surplus after paying the operating expenses and fixed charges, the statement of the operating expenses to be itemized and classified as is done by other public utility corporations, in the District of Columbia, the names of the stockholders and the amount of the stock held in such association or corporation by each of them on December 31st next preceding the date of such report.

(Mar. 2, 1907, 34 Stat. 1133, ch. 2510, § 1.)

Cross references. — Utility service, valuation and accounts, reports to Commission, notice to People's Counsel, disclosure, see § 34-1118.

Prior Codifications. — 1981 Ed., § 43-1106. 1973 Ed., § 43-1206.

§ 34-1608. Maximum rates for gas; additional charge for nonpayment of bills.

(a) No part of any money appropriated by any act shall be used for the payment to the Washington Gas Light Company or the Georgetown Gas Light Company for any gas furnished by said companies for use in any of the public buildings of the United States or the District of Columbia at a rate in excess of $.70 per 1,000 cubic feet.

(b) The Washington Gas Light Company shall not charge or collect for gas furnished a private consumer in any part of the District of Columbia a rate in excess of $.75 per 1,000 cubic feet of gas so furnished; provided, that if a consumer of gas other than the government or the District of Columbia shall not pay monthly any gas bill within 10 days after the same shall have been presented said gas company may charge and collect from any such consumer so failing to pay said gas bill as aforesaid $.10 additional for each 1,000 cubic feet of gas presented by said bill; and provided further, that nothing contained in this section shall be construed as limiting or taking away any of the powers vested by law in the Public Service Commission of the District of Columbia.

(c) The Georgetown Gas Light Company shall not be permitted to charge or collect more than $.85 per 1,000 cubic feet for gas for cooking, illuminating, or other purposes.

(Sept. 1, 1916, 39 Stat. 716, ch. 433, § 6; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21.)

Cross references. — Rate change procedures, appeal and review, see § 34-901.

Prior Codifications. — 1981 Ed., § 43-1107. 1973 Ed., § 43-1207.

CASE NOTES

In general.

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. D.C. Code 1940, §§ 43-301, 43-401, 43-705, 43-706. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

Whatever formula is adopted by District of Columbia Public Utilities Commission for gas rate purposes, the commission's findings must be based on substantial evidence in the record. D.C. Code 1940, § 43-705. Washington Gas Light Co. v. Baker, 188 F.2d 11, 1950 U.S. App. LEXIS 3856 (C.A.D.C. 1950).

CHAPTER 16A. UNAUTHORIZED SWITCHING OF CUSTOMER NATURAL GAS ACCOUNTS. [REPEALED].

Sec.
34-1631 to 34-1634. [Repealed].

§ 34-1631. Definitions. [Repealed].

Repealed.

(Oct. 3, 2001, D.C. Law 14-28, § 3602, 48 DCR 6981; Mar. 16, 2005, D.C. Law 15-227, § 18, 51 DCR 10549.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Temporary Act of 2001 (D.C. Law 14-13, July 10, 2001, law notification 48 DCR 6589).

Emergency legislation. — For temporary (90 day) addition of section, see § 3302 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) addition of section, see § 2 of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Emergency Act of 2001 (D.C. Act 14-31, April 2, 2001, 48 DCR 3338).

Legislative history of Law 14-28. — Law 14-28, the "Fiscal Year 2002 Budget Support Act of 2001", was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

Legislative history of Law 15-227. — Law 15-227, the "Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004", was introduced in Council and assigned Bill No. 15-679, and was retained by Council. The Bill was adopted on first and second readings on July 13, 2004, and October 5, 2004, respectively. Signed by the Mayor on November 1, 2004, it was assigned Act No. 15-567 and transmitted to both Houses of Congress for its review. D.C. Law 15-227 became effective on March 16, 2005.

§ 34-1632. Role, duties, and powers of the Commission. [Repealed].

Repealed.

(Oct. 3, 2001, D.C. Law 14-28, § 3603, 48 DCR 6981; Nov. 1, 2004, D.C. Law 15-227, § 18, 51 DCR 10549.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 3 of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Temporary Act of 2001 (D.C. Law 14-13, July 10, 2001, law notification 48 DCR 6589).

Emergency legislation. — For temporary (90 day) addition of section, see § 3303 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) addition of section, see § 3 of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Emergency Act of 2001 (D.C. Act 14-31, April 2, 2001, 48 DCR 3338).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 34-1631.

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1631.

§ 34-1633. Consumer protections. [Repealed].

Repealed.

(Oct. 3, 2001, D.C. Law 14-28, § 3604, 48 DCR 6981; Nov. 1, 2004, D.C. Law 15-227, § 18, 51 DCR 10549.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 4 of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Temporary Act of 2001 (D.C. Law 14-13, July 10, 2001, law notification 48 DCR 6589).

Emergency legislation. — For temporary (90 day) addition of section, see § 3304 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) addition of section, see § 4 of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Emergency Act of 2001 (D.C. Act 14-31, April 2, 2001, 48 DCR 3338).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 34-1631.

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1631.

§ 34-1634. Investigation of violations and penalties for violations. [Repealed].

Repealed.

(Oct. 3, 2001, D.C. Law 14-28, § 3605, 48 DCR 6981; Nov. 1, 2004, D.C. Law 15-227, § 18, 51 DCR 10549.)

Temporary Addition of Section. — For temporary (225 day) additions, see §§ 5, 6 of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Temporary Act of 2001 (D.C. Law 14-13, July 10, 2001, law notification 48 DCR 6589).

Emergency legislation. — For temporary (90 day) addition of section, see § 3305 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) addition of section, see § 5 of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Emergency Act of 2001 (D.C. Act 14-31, April 2, 2001, 48 DCR 3338).

For temporary (90 day) addition of § 34-1635, see § 6 of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Emergency Act of 2001 (D.C. Act 14-31, April 2, 2001, 48 DCR 3338).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 34-1631.

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1631.

CHAPTER 16B. NATURAL GAS TRUST FUND [REPEALED].

Sec.
34-1651. [Repealed].

§ 34-1651. Natural Gas Trust Fund; public purpose programs. [Repealed].

Repealed.

(Apr. 12, 2005, D.C. Law 15-342, § 101, 52 DCR 2346; Oct, 20, 2005, D.C. Law 16-33, § 2191, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 2072, 53 DCR 6899; Sept. 18, 2007, D.C. Law 17-20, § 2082, 54 DCR 7052.; Oct 22, 2008, D.C. Law 17-250, § 212(b)(1), 55 DCR 9225.)

Emergency legislation. — For temporary (90 day) addition, see § 101 of Omnibus Utility Emergency Amendment Act of 2005 (D.C. Act 16-12, January 28, 2005, 52 DCR 2945).

For temporary (90 day) amendment of section, see § 2191 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2072 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2072 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2072 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2082 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) repeal of section, see § 212(b) of Clean and Affordable Energy Emergency Act of 2008 (D.C. Act 17-508, September 25, 2008, 55 DCR 10856).

Legislative history of Law 15-342. — Law 15-342, the "Omnibus Utility Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-872 which was referred to the Committee on Public Interest. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 31, 2005, it was assigned Act No. 15-760 and transmitted to both Houses of Congress for its review. D.C. Law 15-342 became effective on April 12, 2005.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 34-912.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 34-1515.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 34-1514.

Legislative history of Law 17-250. — For Law 17-250, see notes following § 34-804.

Short title. — Short title of subtitle K of title II of Law 16-33: Section 2191 of D.C. Law 16-33 provided that subtitle K of title II of the act may be cited as the Natural Gas Fund Amendment Act of 2005.

Short title: Section 2071 of D.C. Law 16-192 provided that subtitle F of title II of the act may be cited as the "Natural Gas Trust Fund Amendment Act of 2006".

Short title: Section 2081 of D.C. Law 17-20 provided that subtitle I of title II of the act may be cited as the "Natural Gas Trust Fund Amendment Act of 2007".

CHAPTER 16C. RETAIL NATURAL GAS SUPPLIER LICENSING AND CONSUMER PROTECTION.

Sec.
34-1671.01. Findings.
34-1671.02. Definitions.
34-1671.03. Role, duties, and powers of the Commission.
34-1671.04. Consent to District of Columbia jurisdiction.
34-1671.05. Licensing requirements for retail natural gas suppliers.
34-1671.06. Duties of the gas company.
34-1671.07. Consumer education.
34-1671.08. Consumer protections.
34-1671.09. Information to be provided to the Commission.
34-1671.10. Jurisdiction of the Commission and the Office of the People's Counsel.
34-1671.11. Investigations of violations; penalties for violation.
34-1671.12. Rights, remedies, prohibitions; cumulative.
34-1671.13. Application of District of Columbia and federal consumer protection laws.
34-1671.14. Market power remediation.

§ 34-1671.01. Findings.

The Council of the District of Columbia finds that:

(1) It is in the public interest to promote the availability to customers of adequate, reliable, and reasonably priced retail natural gas from licensed natural gas suppliers that provide customers with the price, terms, conditions, and quality options they elect to meet their respective natural gas needs.

(2) It is the intent of this chapter to:

(A) Clarify existing law regarding the provision of competitive retail natural gas supply in the District of Columbia;

(B) Require the Public Service Commission to license retail natural gas suppliers;

(C) Authorize the Public Service Commission to adopt complaint procedures; and

(D) Establish standards for the protection of customers so that:

(i) Customers have access to reliable, safe, and affordable retail natural gas sales, including high quality customer service; and

(ii)(I) Customers have the right to receive accurate, easily understood information about natural gas suppliers, services, plans, terms and conditions, and rights and remedies.

(II) The information must be unbiased, accurate, and understandable in a written form, that allows for comparison of prices and terms of service.

(3) Customers are protected from unfair, deceptive, fraudulent, and anticompetitive practices, including practices such as cramming, slamming, and providing deceptive information regarding billing terms and conditions of service.

(4) Customers receive accurate and timely bills from their natural gas suppliers.

(5) Customers are entitled to protection of their privacy and are protected from improper use of their customer records or payment histories without their express consent.

(6) Customers have the right to a fair and efficient process for resolving disputes with natural gas suppliers.

(Mar. 16, 2005, D.C. Law 15-227, § 2, 51 DCR 10549.)

Legislative history of Law 15-227. — Law 15-227, the "Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004", was introduced in Council and assigned Bill No. 15-679, and was retained by Council. The Bill was adopted on first and second readings on July 13, 2004, and October 5, 2004, respectively. Signed by the Mayor on November 1, 2004, it was assigned Act No. 15-567 and transmitted to both Houses of Congress for its review. D.C. Law 15-227 became effective on March 16, 2005.

§ 34-1671.02. Definitions.

For the purposes of this chapter, the term:

(1) "Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, or has directly or indirectly, any economic interest in another person.

(2) "Anticompetitive condition" means a condition that would allow a party to:

(A) Exercise vertical or horizontal market power;

(B) Use the ownership or control of a regulated facility to favor an unregulated affiliate or subsidiary, or to discriminate against a non-affiliated entity;

(C) Erect a barrier to entry; or

(D) Compete unfairly or deny effective competition to residential customers.

(3) "Anticompetitive conduct" means an activity that would:

(A) Violate any applicable antitrust law;

(B) Constitute favorable treatment of an affiliate;

(C) Discriminate against an unrelated entity;

(D) Constitute a barrier to entry; or

(E) Confer an unfair competitive advantage upon an entity.

(4) "Applicant" means a person who is applying for a license to sell or supply natural gas to retail customers in the District of Columbia.

(5) "Commission" means the Public Service Commission of the District of Columbia.

(6) "Cramming" means the unauthorized addition of services or charges to a customer's existing service options.

(7) "Customer" means a purchaser of natural gas in whose name a service account exists with the company.

(8) "Distribution service" means the delivery of natural gas to a customer at the customer's facilities by or through the instrumentalities and facilities of the gas company.

(9) "Enrollment" means the process by which the gas company receives and processes the notification from the natural gas supplier that a customer has entered into a contract for the supply of natural gas with that natural gas supplier.

(10) "Enrollment agreement" means the written contract that contains the terms and conditions for the provision of retail natural gas sales that is entered into between a residential customer and a natural gas supplier.

(11) "Gas company" means a person regulated by the Commission that

owns or controls the distribution facilities required for the transmission and delivery of natural gas to customers.

(12) "Natural gas supplier" means a person including an aggregator, broker, or marketer, who sells natural gas or purchases, brokers, arranges or, markets natural gas for sale to customers. The term shall not include a person that supplies natural gas exclusively for its own consumption or the consumption of one or more of its affiliates. The term shall not include the following:

(A) Building owners, lessees, or managers who manage the internal distribution system serving the building and who supply natural gas solely to occupants of the building for use by the occupants;

(B)(i) Any person who purchases natural gas for its own use or for the use of its subsidiaries or affiliates; or

(ii) Any apartment building or office building manager who aggregates retail natural gas sales requirements for his or her building, and who does not:

(I) Take title to natural gas;

(II) Market retail natural gas sales to the individually-metered tenants of his or her building; or

(III) Engage in the resale of natural gas to others;

(C) Property owners who supply small amounts of natural gas, at cost, as an accommodation to lessors or licensees of the property;

(D) A consolidator; or

(E) The gas company.

(13) "Natural gas supplier choice" means the right of natural gas suppliers to use and interconnect with the natural gas distribution system on a nondiscriminatory basis to distribute natural gas from any natural gas supplier to any customer and of customers to purchase natural gas supply from their choice of licensed natural gas suppliers.

(14) The "Office" or the "Office of the People's Counsel" means the Office of the People's Counsel of the District of Columbia.

(15) "Person" means an individual, corporation, company, association, joint-stock company, firm, partnership or other entity.

(16) "Slamming" means the unauthorized switching of a customer's service from one natural gas supplier to another natural gas supplier or to the default service provider.

(17) "Transfer" means the process by which the gas company facilitates the actual transition of the customer's natural gas account from (A) the gas company to a natural gas supplier, (B) one natural gas supplier to another, or (C) one natural gas supplier to the gas company.

(Mar. 16, 2005, D.C. Law 15-227, § 3, 51 DCR 10549.)

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1651.01.

§ 34-1671.03. Role, duties, and powers of the Commission.

(a) The Commission shall adopt regulations or issue orders to:

(1) Govern the licensing and the revocation, suspension, or surrender of a natural gas supplier license;

(2) Implement customer protections;

(3) Establish procedural rules for complaints, investigations, and dispositional hearings;

(4) Impose a civil penalty or other remedy;

(5) Require that residential customers' bills indicate, as an individual line item, charges for retail natural gas sales;

(6) Establish reasonable requirements for solicitation of residential customers;

(7) Establish uniform contract terms, except as to price, for the enrollment agreement for residential customers;

(8) Establish reasonable procedures for contracting between residential customers and natural gas suppliers;

(9) Establish reasonable requirements and limitations relating to deposits, billing, contract cancellations, and disconnections of residential customers; and

(10) Establish minimum service quality, safety, and reliability standards.

(b) The Commission shall adopt any other regulations, or issue any other orders, consistent with the policies enunciated in this chapter that are necessary to ensure the development of a competitive market for retail natural gas, billing, and any component of retail natural gas sales declared to be a potentially competitive service.

(Mar. 16, 2005, D.C. Law 15-227, § 4, 51 DCR 10549.)

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1651.01.

§ 34-1671.04. Consent to District of Columbia jurisdiction.

Any licensee or other person who knowingly engages in business activities that are regulated under this chapter, with or without filing an application, is deemed to have consented to the jurisdiction of the Commission and the courts of the District of Columbia, for an action arising under this chapter.

(Mar. 16, 2005, D.C. Law 15-227, § 5, 51 DCR 10549.)

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1651.01.

§ 34-1671.05. Licensing requirements for retail natural gas suppliers.

(a) A natural gas supplier shall obtain a license issued by the Commission to do business in the District of Columbia.

(b) An application for a natural gas supplier license shall:

(1) Be made to the Commission in writing by form prescribed by the Commission;

(2) Be verified by oath or affirmation;

(3) Be accompanied by an application fee determined by the Commission; and

(4) Contain the following:

(A) Proof of technical and managerial competence;

(B) An affidavit agreeing to comply with all applicable consumer protection and environmental laws and regulations, the requirements of this chapter, and orders and regulations of the Commission issued under this chapter;

(C) Proof of financial integrity;

(D)(i) Proof that the applicant has registered with the Mayor to transact business in the District of Columbia; and

(ii) The address of the applicant's registered office and name of the registered agent in the District of Columbia.

(E) An agreement or promise to be subject to applicable taxes;

(F) A statement indicating:

(i) Whether the applicant has been denied a natural gas supplier license in any state in the United States;

(ii) Whether a natural gas supplier license has been suspended or revoked by any state in the United States; and

(iii) Where, if any, other natural gas supplier license applications are pending in the United States; and

(G) Any other information required by the Commission.

(c) The Commission:

(1) May require an applicant to post a bond or other approved security instrument to insure an applicant's financial integrity;

(2) Shall establish procedures and requirements regarding the revocation or surrender of a license;

(3) Shall enter an order providing for notice to appropriate persons and an opportunity for written comment on the application;

(4) Shall take no action on an application until it is considered complete and filed; provided, that if after 30 days of receipt by the Commission an application fails in any respect to be complete, the Commission shall notify the applicant in writing of the deficiencies and the application shall not be regarded as filed;

(5)(A) Shall, within a reasonable time after the filing of a completed application, issue a final order, granting or denying a license; and

(B) Shall issue a license authorizing the natural gas supplier to provide retail natural gas sales in the District of Columbia if the applicant is found to be fit, willing, and able to perform properly the service proposed and to conform to the applicable provisions of this chapter and the regulations and orders of the Commission, and to the extent the proposed service will be consistent with the public interest;

(6) Shall deny an application upon a showing that the applicant or anyone acting in concert with the applicant has a history of violations of laws, rules, or regulations designed to protect the public;

(7) Shall establish any other requirements for an applicant that the Commission determines to be in the public interest;

(8) May adopt regulations or issue orders to implement this subsection, including the protection of confidential or proprietary information; and

(9) Upon just cause, may determine that any deadline imposed under this subsection regarding the granting of a license shall be tolled until such time as the Commission determines whether the license shall be granted.

(d) A license shall not be transferred without the prior approval of the Commission.

(e) All monies collected by the Commission under this section shall be used exclusively for the daily operations of the Commission.

(f) All natural gas suppliers licensed by the Commission shall continue to possess financial and technical capability to render service and offer service pursuant to contractual terms and conditions. This is a continuing obligation and may be reviewed by the Commission at any time.

(g)(1) A licensee shall remain in good standing and the Commission may periodically request that a licensee certify that it remains in good standing to transact business in the District of Columbia.

(2) A licensee shall promptly notify the Commission of any change of its registered agent or registered office.

(Mar. 16, 2005, D.C. Law 15-227, § 6, 51 DCR 10549.)

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1651.01.

§ 34-1671.06. Duties of the gas company.

(a) The gas company shall provide distribution services to all customers and natural gas suppliers on rates, terms, and conditions that are comparable to the gas company's own use of its distribution system. The gas company shall not operate its distribution systems in a manner that favors the natural gas supply of the gas company's affiliates and shall not price its services in a manner that impedes competition.

(b) The gas company shall comply with the following provisions with respect to its relationship with its customers:

(1) The gas company shall provide natural gas supplier choice information and facilitate enrollment of customers pursuant to the natural gas supplier choice education program approved by the Commission.

(2) The gas company shall provide, pursuant to the prices, terms, and conditions of its tariffs approved by the Commission, default service to those customers who do not select a natural gas supplier and to customers who chose a natural gas supplier but whose service is terminated by the customer or by the natural gas supplier for any reason.

(Mar. 16, 2005, D.C. Law 15-227, § 7, 51 DCR 10549.)

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1651.01.

§ 34-1671.07. Consumer education.

(a) The Commission shall order the gas company, in conjunction with the Office of the People's Counsel and the District of Columbia Energy Office, to implement a consumer education program to inform residential customers of changes in the natural gas industry and provide natural gas supplier choice information.

(b) The consumer education program shall include the dissemination of information to enable residential customers to make informed choices about available licensed natural gas suppliers and the services they provide and suppliers, notification to residential natural gas customers of the right to submit their names for inclusion on a list of residential customers not wanting to receive solicitations from natural gas suppliers, and communication to residential customers of the consumer protection provisions of this chapter. The Commission shall ensure the neutrality of the content and message of the consumer education program's advertisements and materials. The Commission shall promulgate standards for the recovery of consumer education program costs from residential customers which include reasonable measures and criteria to evaluate the success of the program in enhancing residential customer understanding of retail choice.

(c) As part of the consumer education program, the Commission shall develop and maintain information regarding residential rates charged and services provided by licensed natural gas suppliers to residential customers. The information required shall be:

(1) Readily understandable and formatted to provide a comparison of rates and services offered by natural gas suppliers; and

(2) Made available to the public through the ordinary means of publication by the Commission, including posting on the Internet, or such other means as determined by the Commission.

(d) Any dispute regarding the consumer education program mandated by this section shall be resolved by the Commission.

(Mar. 16, 2005, D.C. Law 15-227, § 8, 51 DCR 10549.)

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1651.01.

§ 34-1671.08. Consumer protections.

(a) The Commission shall adopt regulations or issue orders specifying the necessary minimum service requirements of a licensed natural gas supplier regarding the marketing, solicitation, sale, or provision, directly or through its agent, of retail natural gas.

(b) The minimum service requirements shall include the following:

(1) A requirement that a licensed retail natural gas supplier:

(A) Provide residential customers with accurate pricing and terms and conditions of service, and with a document containing the terms and conditions of pricing and service before the contract for service becomes binding; and

(B) Disclose to residential customers the conditions under which a residential customer may rescind a contract without penalty.

(2) Before a residential customer is eligible for service from a licensed retail natural gas supplier, the residential customer shall discharge, or enter into a plan to discharge, existing arrearages (except any pending disputed arrearages) owed to or being billed by the gas company for natural gas service; and

(3) Minimum service quality.

(c) The regulations or orders also shall provide for disclosure of the terms identifying how residential customers may transfer or terminate service, including any costs and required notice.

(d)(1) The following requirements shall be standard content for residential customers' bills:

(A) To the maximum extent practicable, an itemized list of service components to enable a residential customer to recalculate his or her bill for accuracy;

(B) The identification of the supplier of a service;

(C) A statement of where, when, and how payment may be made and provision of a toll-free or local customer assistance and complaint telephone number for the natural gas supplier, as well as the addresses and customer assistance telephone numbers for the Commission and the Office of the People's Counsel, with the available hours noted;

(D) A clear explanation for 2 consecutive billing periods, of any changes in the rates, terms, and conditions of service; and

(E) Price disclosure and disclosure of total billing units for the billing period and historical annual usage.

(2) The Commission may alter the bill contents prescribed by this subsection if necessary to conform with billing or pricing schemes specifically approved by the Commission.

(e) The regulations or orders shall include policies and procedures that provide for the following:

(1) The coordination between natural gas suppliers and the gas company for the purpose of maintaining service;

(2) The allocation of partial payments between natural gas suppliers and the gas company when service components are jointly billed;

(3) A prohibition against the transfer, or the authorization of the transfer of, a residential customer's natural gas supplier without the prior consent of the residential customer in accordance with appropriate confirmation practices;

(4) A requirement for disclosure of the conditions under which a residential customer may rescind a decision to switch his or her natural gas supplier without penalty; and

(5) Specification of any required notice and any penalty for early termination of contract.

(Mar. 16, 2005, D.C. Law 15-227, § 9, 51 DCR 10549.)

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1651.01.

§ 34-1671.09. Information to be provided to the Commission.

(a) A natural gas supplier shall provide the Commission with such information regarding its retail natural gas sales as the Commission considers necessary to carry out the provisions of this chapter. The Commission shall take such measures as it considers necessary to protect the confidentiality of such information.

(b) The Commission shall require a licensed natural gas supplier to file an annual financial report regarding those retail natural gas sales for which it is subject to licensure.

(Mar. 16, 2005, D.C. Law 15-227, § 10, 51 DCR 10549.)

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1651.01.

§ 34-1671.10. Jurisdiction of the Commission and the Office of the People's Counsel.

(a)(1) The Commission shall have jurisdiction upon the complaint of any person, the People's Counsel, or on its own initiative regarding the provision by a licensed natural gas supplier of any service for which it is subject to licensure.

(2) The Commission shall have jurisdiction upon the complaint of any person, the People's Counsel, or on its own initiative to determine whether a licensed natural gas supplier has violated or failed to comply with any provision of this chapter regarding retail natural gas sales for which it is subject to licensure or any regulation, rule, or order adopted or issued by the Commission.

(3) The Commission, after reasonable notice and opportunity for hearing, may conduct an investigation, and impose a penalty, for any violation of this chapter or any regulation or order adopted or issued by the Commission.

(b) The People's Counsel may file a complaint under any provision of this chapter.

(c) The Commission shall, by regulation or order, establish procedures for complaints and for resolving disputes between the gas company, natural gas suppliers, and customers.

(Mar. 16, 2005, D.C. Law 15-227, § 11, 51 DCR 10549.)

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1651.01.

§ 34-1671.11. Investigations of violations; penalties for violation.

(a) For a violation of any provision of this chapter or a violation of any

regulation or order issued under this chapter, after notice and a hearing, the Commission may:

(1) Suspend, revoke, or conditionally rescind the license of a natural gas supplier if the Commission determines, after reasonable notice and opportunity for hearing, that the natural gas supplier:

(A) Has obtained or attempted to obtain a license through fraud, deception, or misrepresentation;

(B) Has provided false or misleading information to the Commission, knowingly or with reckless disregard;

(C) Has committed fraud or engaged in market advertising or trade practices that are unfair, false, misleading, or deceptive;

(D) Has disclosed information about a customer or used information about a customer for any purpose other than the purpose for which the information was originally acquired, without the customer's written consent, unless the disclosure is for bill collection or credit rating reporting purposes;

(E) Has been convicted of any fraud-related crimes;

(F) Has not fulfilled the licensing requirements under this chapter or is not authorized to transact business in the District of Columbia;

(G)(i) Has violated any consumer protection law or regulation of the United States, District of Columbia, or of any state; or

(ii) Has had its authority to engage in the supply and sale of natural gas revoked or suspended by any other state, agency, or authority for reasons consistent with this section;

(H) Has violated or failed to comply with the provisions of any regulation or order adopted by the Commission; or

(I) Is incapable of discharging the functions of a natural gas supplier;

(2) Impose a civil penalty;

(3) Order a refund or credit to a customer;

(4) Cancel a contract or part of a contract between a customer and a natural gas supplier;

(5) Order that any person violating any provision of this chapter or any rule adopted pursuant to this chapter cease and desist from future violations thereof or take affirmative corrective action as may be necessary with regard to any act or practice found unlawful by the Commission;

(6) Issue a letter of warning, reprimand, or censure with regard to any act, conduct, or practice that in the judgment of the Commission, upon consideration of the relevant facts and circumstances, does not warrant the initiation of more severe action;

(7) Examine any record, book, document, account, electronic data, or paper maintained by or for any natural gas supplier in the provision of natural gas; or

(8)(A) For the purpose of preserving evidence of an unlawful act or practice, after notice and hearing, impound any record, book, document, account, paper, electronic data, goods, ware, item, or facility used or maintained by or for any natural gas supplier in the course of supplying natural gas;

(B) As may be necessary, the Commission shall issue an order protecting the confidentiality of items subject to this paragraph.

(b) The Commission, on its own initiative or upon proper motion of the People's Counsel or any aggrieved party, may take any of the following actions:

(1) Require any person to file a statement or report in writing under oath as to the facts and circumstances concerning the rendition of any service or conduct of any sale incidental to the discharge of this chapter;

(2) Examine under oath any person in connection with any act or practice subject to the requirements of this chapter; or

(3) Examine or inspect any goods, ware, item, or facility used in the supply of natural gas.

(c) The Commission may enter a temporary order suspending or limiting any license issued by the Commission, pending a final determination after notice and hearing, if the Commission determines that there is reasonable cause to believe that customers or the reliability of natural gas supply in the District of Columbia will be harmed by the actions of a natural gas supplier or that there is imminent danger to the public health, safety, or welfare. In such instance, the Commission shall move expeditiously to reach a final determination.

(d)(1) A civil penalty imposed by the Commission under this section shall not exceed $10,000 per violation.

(2) The Commission shall determine the amount of the civil penalty after considering:

(A) Any history of prior violations;

(B) The gravity and duration of the current violation;

(C) The degree of the violator's culpability;

(D) The prospective effect of the penalty on the ability of the violator to conduct business;

(E) Any good faith effort on the part of the violator in attempting to achieve compliance; and

(F) Other factors the Commission may consider appropriate.

(e) The Commission or the People's Counsel, in addition to any other proceeding authorized by law, may seek and obtain in a summary proceeding in the Superior Court of the District of Columbia an injunction prohibiting the act or practice.

(Mar. 16, 2005, D.C. Law 15-227, § 12, 51 DCR 10549.)

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1651.01.

§ 34-1671.12. Rights, remedies, prohibitions; cumulative.

The rights, remedies, and prohibitions accorded by the provisions of this chapter are in addition to and cumulative of any right, remedy, or prohibition accorded by the common law or any statute of the District of Columbia and nothing contained herein shall be construed to deny, abrogate, or impair any such common law or statutory right, remedy, or prohibition.

(Mar. 16, 2005, D.C. Law 15-227, § 13, 51 DCR 10549.)

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1651.01.

§ 34-1671.13. Application of District of Columbia and federal consumer protection laws.

This chapter shall not be construed to exempt natural gas suppliers from otherwise applicable District of Columbia or federal consumer protection laws.

(Mar. 16, 2005, D.C. Law 15-227, § 14, 51 DCR 10549.)

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1651.01.

§ 34-1671.14. Market power remediation.

(a) The Commission and the People's Counsel shall monitor the District of Columbia retail markets for natural gas supply and sales declared by the Commission to be potentially competitive services to ensure that the markets are not being adversely affected by anticompetitive conduct and anticompetitive conditions.

(b)(1) If, as a result of the monitoring efforts required by subsection (a) of this section or as a result of a complaint, the Commission determines that the District of Columbia retail markets for retail natural gas sales are being adversely affected by anticompetitive conduct or anticompetitive conditions, the Commission shall take remedial action to remedy the impact of the anticompetitive conduct or anticompetitive conditions.

(2)(A) If, as a result of the monitoring efforts required by this section, the Commission or the People's Counsel obtain evidence that the retail markets for natural gas supply or sales declared by the Commission to be competitive services are being adversely affected by anticompetitive conduct or anticompetitive conditions other than the anticompetitive conduct or anticompetitive conditions described in paragraph (1) of this subsection, the Commission or the People's Counsel shall transmit the evidence to the Attorney General, the Department of Justice, the Federal Trade Commission, and any other appropriate federal agency.

(B) The Commission or the People's Counsel may request the Attorney General to issue a report to the Council within 6 months of the transmittal of evidence by the Commission or the People's Counsel under subparagraph (A) of this paragraph, explaining the course of its investigation, the actions that it has taken or plans to take, and the reasons for those actions. The failure of the Attorney General to bring an action within 6 months of the receipt of the transmittal shall not be deemed to eliminate the Attorney General's otherwise existing authority to act. Any report submitted under this subsection shall not include information that may compromise any investigation.

(c) Nothing in this section shall affect the authority of the Attorney General

to investigate or take action against anticompetitive conduct or anticompetitive conditions on its own initiative.

(Mar. 16, 2005, D.C. Law 15-227, § 15, 51 DCR 10549.)

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-1651.01.

SUBTITLE V. TELECOMMUNICATIONS.

CHAPTER 17. BAN ON AUTOMATED DIALING SYSTEMS.

Sec.
34-1701. Ban on automated telephone dialing systems for commercial solicitation; definitions; prohibition; exceptions.

§ 34-1701. Ban on automated telephone dialing systems for commercial solicitation; definitions; prohibition; exceptions.

(a) For the purposes of this section, the term:

(1) "Automated dialing or push-button or tone-activated address signaling telephone system with a prerecorded message" is any equipment used for telephone solicitation purposes, which alone or in conjunction with other equipment, can convey a prerecorded or synthesized voice message to the number called.

(2) "Soliciting" means any attempt to sell or lease consumer goods, services, or real property to another person.

(b)(1) A person may not use an automated dialing, push-button, or tone-activated address signaling telephone system with a prerecorded message for the sole purpose of:

(A) Soliciting a person over the telephone to purchase or lease goods, services, or real property; or

(B) Requesting survey information over the telephone where results are to be used directly for the purpose of soliciting a person to purchase or lease goods, services, or real property.

(2) This section shall not apply if:

(A) The person soliciting is a federal, state, or local government agency that uses an automated dialing prerecorded message for emergency purposes; or

(B) A person has a preexisting business relationship with the party called and the call concerns goods, services, or real property that have been previously ordered or purchased.

(3) Any automated, push-button, or tone-activated address signaling telephone system used in the District must automatically create a disconnect signal or on hook condition which allows the called party's line to be released within 10 seconds after the called party hangs up.

(4) Any person who violates this section shall be fined a civil penalty of not more than $1,000 for the 1st violation and not more than $5,000 for each subsequent violation.

(5) The Corporation Counsel of the District of Columbia, or his assistants, shall prosecute violations of this section in the name of the District of Columbia.

(July 13, 1991, D.C. Law 9-14, §§ 2, 3, 38 DCR 3384.)

Prior Codifications. — 1981 Ed., § 43-1418.

Legislative history of Law 9-14. — Law 9-14, the "Ban on Automated Telephone Dialing Systems for Commercial Solicitation Act of 1991," was introduced in Council and assigned Bill No. 9-49, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on April 9, 1991, and May 7, 1991, respectively. Signed by the Mayor on May 17, 1991, it was assigned Act No. 9-34 and transmitted to both Houses of Congress for its review.

CHAPTER 17A. DIGITAL INCLUSION.

Sec.
34-1731.01. Findings and purposes.
34-1731.02. Definitions.
34-1731.03. Franchise agreement.
34-1731.04. Insurance and bonds; liability.
34-1731.05. Selection of the franchisee.
34-1731.06. Termination of the franchise agreement.
34-1731.07. Franchisee selection procedures.
34-1731.08. Delegation of authority.
34-1731.09. Human Rights Act compliance.
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§ 34-1731.01. Findings and purposes.

(a) The Council finds that:

(1) Low-income residents and residents in economically disadvantaged areas of the District of Columbia are also likely to be digitally-disadvantaged in that they cannot afford access to the Internet or may lack the computer equipment and training necessary to benefit meaningfully from Internet access.

(2) Certain assets of the District, including light poles and buildings, may provide value to telecommunications carriers for the attachment of wireless network antennae and the deployment of broadband internet services.

(3) The District government does not have the funds to provide to digitally-disadvantaged residents the range of services necessary to afford Internet access and permit them to benefit meaningfully from that Internet access.

(4) By awarding one or more franchises that permit a telecommunications carrier to use District-owned assets such as buildings and poles on a nonexclusive basis in return for the provision of certain services to digitally-disadvantaged residents, the District government can meet the Internet access needs of these residents without additional cost or risk to the District.

(b) The purposes of this chapter are to:

(1) Obtain value for the District through the awarding of rights to use poles, buildings, and other assets of the District for telecommunications purposes; and

(2) Provide for the furnishing of benefits to digitally-disadvantaged residents of the District in exchange for a franchise to use poles, buildings, and other assets of the District for Internet-related telecommunications purposes.

(Mar. 2, 2007, D.C. Law 16-210, § 2, 53 DCR 9122.)

Emergency legislation. — For temporary (90 day) addition, see § 2 of Digital Inclusion Emergency Act of 2006 (D.C. Act 16-467, July 25, 2006, 53 DCR 6754).

Legislative history of Law 16-210. — Law 16-210, the "Digital Inclusion Act of 2006", was introduced in Council and assigned Bill No. 16-710, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 11, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 25, 2006, it was assigned Act No. 16-510 and transmitted to both Houses of Congress for its review. D.C. Law 16-210 became effective on March 2, 2007.

§ 34-1731.02. Definitions.

For purposes of this chapter, the term:

(1) "Backhaul" means the transmission of voice and data traffic from the wireless network to a wireline network infrastructure.

(2) "Census tracts" means geographical areas defined by median household income according to the most recent census for the District of Columbia published by the United States Bureau of the Census.

(3) "Connectivity" means connection from a home to a telecommunications provider's network.

(4) "DC-Net" means the District government's telecommunications service network and information technology infrastructure.

(5) "Digitally-disadvantaged areas" means census tracts in the District of Columbia with median income below the median income in the District as a whole.

(6) "Digitally-disadvantaged population" means low-income residents of the District of Columbia.

(7) "Digitally-disadvantaged residents" means residents of digitally-disadvantaged areas.

(8) "Digitally-disadvantaged resident household" means all digitally-disadvantaged residents residing at a fixed single-family address in the District of Columbia that define themselves as a family unit.

(9) "District telecommunications assets" means nonexclusive access to District-owned pole-mounted street light fixtures and buildings and backhaul on DC-Net from selected District locations to carrier hotel at 1275 K Street N.W., Washington, D.C., for Internet-related services.

(10) "Franchisee" means a person or entity that enters into a franchise agreement pursuant to a successful bid and award.

(11) "Low-income resident" means any District of Columbia resident whose income meets the eligibility standards for reduced price meals according to the Eligibility Guidelines for Free and Reduced Price Meals for the National School Lunch Program, as established annually pursuant to sections 9(b)(1) and 17(c)(4) of AN ACT To provide assistance to the States in the establishment, maintenance, operation, and expansion of school lunch programs, and for other purposes, approved June 4, 1946 (60 Stat. 233; 42 U.S.C. §§ 1758(b)(1) and 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966, approved October 11, 1966 (80 Stat. 885; 42 U.S.C. §§ 1772 (a)(6) and 1773(e)(1)(A)).

(12) "OCTO" means Office of the Chief Technology Officer.

(13) "Package of services for digitally-disadvantaged residents" means some combination of connectivity, computers, software, computer training, support, and Internet service provider services.

(14) "RFI" means a request for information.

(15) "RFP" means a request for proposals.

(Mar. 2, 2007, D.C. Law 16-210, § 3, 53 DCR 9122.)

Emergency legislation. — For temporary (90 day) addition, see § 3 of Digital Inclusion Emergency Act of 2006 (D.C. Act 16-467, July 25, 2006, 53 DCR 6754).

Legislative history of Law 16-210. — For Law 16-210, see notes following § 34-1731.01.

§ 34-1731.03. Franchise agreement.

(a) The Mayor shall, within 30 days of March 2, 2007, issue an RFI to be followed by an RFP pursuant to the requirements of Unit A of Chapter 3 of Title 2, for a franchise agreement for the use of District telecommunications assets for telecommunications purposes in exchange for the furnishing of a package of services for digitally-disadvantaged residents. Upon an award, the Mayor shall enter into a franchise agreement with the franchisee.

(b) The franchise agreement shall be a nonexclusive agreement in the District for private use of District telecommunications assets for telecommunications purposes in furtherance of the purposes of this chapter for Internet-related telecommunications purposes.

(c) The franchise agreement shall be for a period not to exceed 5 years. One year prior to the termination of a franchise agreement, each party shall notify the other, in writing, as to whether it wants to renegotiate the franchise agreement for an additional period of time. Absent satisfactory renegotiation for a renewal period, the Mayor shall, based upon an evaluation of the bids received following the issuance of an RFP, enter into a new franchise agreement for the use of District telecommunications assets in exchange for the furnishing of a package of services for digitally-disadvantaged residents. The terms of a new franchise agreement shall not be inconsistent with the provisions of this chapter.

(d) Under the terms of a franchise agreement, the franchisee shall be responsible for:

(1) Offering to each digitally-disadvantaged household specified in the franchise agreement the complete package of services for digitally-disadvantaged residents at no cost to the household;

(2) Providing to each digitally-disadvantaged resident household that accepts the offer the complete package of services for digitally-disadvantaged residents at no cost to the household;

(3) Providing the package of services for digitally-disadvantaged residents according to a time schedule established in the franchise agreement;

(4) Reporting to the Mayor, no less often than quarterly the number of:

(A) The number of digitally-disadvantaged households to which the franchisee has offered the package of services for digitally-disadvantaged residents;

(B) The number of digitally-disadvantaged resident households that have accepted the franchisee's offer of that package of services for digitally-disadvantaged residents, and

(C) The number of digitally-disadvantaged resident households to which the franchisee has provided the package of services for digitally-disadvantaged residents by the dates specified in the schedule established in the franchise agreement;

(5) Maintaining records, which shall be available to the Mayor on request, sufficient to identify:

(A) All digitally-disadvantaged resident households to which the franchise has offered the package of services for digitally-disadvantaged residents;

(B) All digitally-disadvantaged resident households that have accepted the franchisee's offer of the package of services for digitally-disadvantaged residents;

(C)(i) All digitally-disadvantaged resident households to which the franchisee has provided the package of services for digitally-disadvantaged residents; and

(ii) The date on which each digitally-disadvantaged resident household received that package of services for digitally-disadvantaged residents;

(D)(i) All complaints received by the franchisee in connection with offering and providing the package of services for digitally-disadvantaged residents; and

(ii) The manner and date of resolution of each complaint;

(6) All costs and expenses of the activities described in paragraphs (1) through (4) of this subsection; and

(7) All costs and expenses incident to the franchisee's use of District telecommunications assets as defined in this chapter.

(e) The franchise agreement shall establish:

(1) The specific population of digitally-disadvantaged residents (by income level, residence in digitally-disadvantaged areas, or both) to which the franchisee agrees to offer the package of services for digitally-disadvantaged residents to each digitally-disadvantaged resident household;

(2) The schedule according to which the franchisee will provide the package of services for digitally-disadvantaged residents to the digitally-disadvantaged resident households to be served pursuant to the franchise agreement;

(3) Procedures for periodically upgrading hardware provided as part of any package of services to digitally-disadvantaged resident households during the course of the franchise agreement;

(4) That the franchisee shall be subject to fees, payable to the Treasurer of the District of Columbia, for failure to adhere to the schedule described in subsection (d)(3) of this section and paragraph (2) of this subsection;

(5) That prior to signing the franchise agreement, the Mayor and the franchisee shall define the franchisee's specific use of District telecommunications assets; and

(6)(i) That upon the expiration of the franchise agreement, or upon the expiration of a renewal term, all computers, peripherals, and other items furnished by the franchisee to any household pursuant to the franchise agreement shall remain the property of the household; and

(ii) That no person who received any item or service that is part of the package of services for digitally-disadvantaged residents shall be liable for any fee or charge for such item or service.

(f) The Mayor shall include in the franchise agreement the requirements of this chapter and any other provisions that the Mayor considers appropriate to carry out the purposes of this chapter.

(g) Pursuant to the requirements of § 1-204.51, the franchise agreement shall be subject to approval by the Council.

(Mar. 2, 2007, D.C. Law 16-210, § 4, 53 DCR 9122.)

Emergency legislation. — For temporary (90 day) addition, see § 4 of Digital Inclusion Emergency Act of 2006 (D.C. Act 16-467, July 25, 2006, 53 DCR 6754).

Legislative history of Law 16-210. — For Law 16-210, see notes following § 34-1731.01.

§ 34-1731.04. Insurance and bonds; liability.

(a) The franchisee shall assume all legal responsibility for, and shall hold the District harmless from, any costs or liability that arise because of injury to persons or property caused by, or in relation, to the provision of the package of services for digitally-disadvantaged residents or the franchisee's use of District telecommunications assets pursuant to this chapter and the franchise agreement.

(b) The Mayor shall require the franchisee to obtain liability insurance sufficient to insure against all liability or costs that arise because of injury to persons or property caused by, or in relation to, the provision of the package of services for digitally-disadvantaged residents and the franchisee's use of District telecommunications assets pursuant to this chapter and the franchise agreement.

(c) The Mayor shall require the franchisee to obtain a performance bond sufficient to guarantee the provision of the package of services for digitally-disadvantaged residents pursuant to this chapter and the franchise agreement.

(d) No person aggrieved or damaged in any way by any act or omission of the franchisee related to the offering or provision of the package of services for digitally-disadvantaged residents or the franchisee's use of District telecommunications assets pursuant to this chapter and the franchise agreement shall have a cause of action against the District.

(Mar. 2, 2007, D.C. Law 16-210, § 5, 53 DCR 9122.)

Emergency legislation. — For temporary (90 day) addition, see § 5 of Digital Inclusion Emergency Act of 2006 (D.C. Act 16-467, July 25, 2006, 53 DCR 6754).

Legislative history of Law 16-210. — For Law 16-210, see notes following § 34-1731.01.

§ 34-1731.05. Selection of the franchisee.

In evaluating and awarding the franchise agreement, the Mayor shall give priority to entities that have the technical and financial ability to successfully provide the package of services for digitally-disadvantaged residents included in each proposal and provide written evidence that they meet the following criteria in the following order of priority:

(1) A proposal to provide a package of services for the largest number of digitally-disadvantaged residents, by income level, or residence in digitally-disadvantaged areas, or both;

(2) A proposal to provide a package of services to digitally-disadvantaged residents according to the fastest schedule;

(3) A proposal that includes provisions to periodically upgrade hardware provided as part of any package of services to digitally-disadvantaged residents;

(4) Such other factors as the Mayor may identify in the best interests of the District to further the purposes of this chapter.

(Mar. 2, 2007, D.C. Law 16-210, § 6, 53 DCR 9122; Mar. 25, 2009, D.C. Law 17-353, § 152, 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) addition, see § 6 of Digital Inclusion Emergency Act of 2006 (D.C. Act 16-467, July 25, 2006, 53 DCR 6754).

Legislative history of Law 16-210. — For Law 16-210, see notes following § 34-1731.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 34-804.

§ 34-1731.06. Termination of the franchise agreement.

(a) The Mayor shall notify the franchisee in writing of any violations of the franchise agreement and shall establish a compliance schedule for correcting the violations. If the compliance schedule is not met, the Mayor may terminate the franchise agreement after 60 days' written notice to the franchisee of the intent to terminate the franchise agreement, setting forth the reasons for the termination.

(b) In the event of bankruptcy of the franchisee, the Mayor shall terminate the franchise agreement and provide the franchisee written notice of this action.

(c) In addition to the grounds for termination of the franchise agreement under subsections (a) and (b) of this section, the Mayor may include in the franchise agreement any other terms and conditions that shall constitute the basis for cancellation that are in the best interests of the District.

(Mar. 2, 2007, D.C. Law 16-210, § 7, 53 DCR 9122.)

Emergency legislation. — For temporary (90 day) addition, see § 7 of Digital Inclusion Emergency Act of 2006 (D.C. Act 16-467, July 25, 2006, 53 DCR 6754).

Legislative history of Law 16-210. — For Law 16-210, see notes following § 34-1731.01.

§ 34-1731.07. Franchisee selection procedures.

Notwithstanding provisions of Unit A of Chapter 3 of Title 2, to the contrary, except the protest and dispute provisions over which the Contract Appeals Board shall maintain jurisdiction, the Mayor shall implement the following franchise selection procedure in awarding one or more franchises pursuant to this chapter:

(1) Request for information;

(2) Evaluation of the RFI received and preparation of the RFP;

(3) Issuance of the RFP and evaluation of proposals received;

(4) Submission of an executive summary, including findings and determination that selection of one or more franchisees will provide the greatest benefit to the largest population of digitally-disadvantaged residents of the District of Columbia, including a rationale for limiting the franchise award to

one entity or extending franchises to more than one entity, to the Council by the Mayor;

(5) Council review and approval of the proposed franchise agreement; and

(6) Execution of franchise agreement.

(Mar. 2, 2007, D.C. Law 16-210, § 8, 53 DCR 9122.)

Emergency legislation. — For temporary (90 day) addition, see § 8 of Digital Inclusion Emergency Act of 2006 (D.C. Act 16-467, July 25, 2006, 53 DCR 6754).

Legislative history of Law 16-210. — For Law 16-210, see notes following § 34-1731.01.

§ 34-1731.08. Delegation of authority.

The Mayor may delegate the powers established by this chapter to OCTO. In exercising this authority, OCTO may consult with such other agencies as it considers appropriate in the best interests of the District.

(Mar. 2, 2007, D.C. Law 16-210, § 9, 53 DCR 9122.)

Emergency legislation. — For temporary (90 day) addition, see § 9 of Digital Inclusion Emergency Act of 2006 (D.C. Act 16-467, July 25, 2006, 53 DCR 6754).

Legislative history of Law 16-210. — For Law 16-210, see notes following § 34-1731.01.

§ 34-1731.09. Human Rights Act compliance.

Each franchise agreement shall comply with § 2-1402.67.

(Mar. 2, 2007, D.C. Law 16-210, § 10, 53 DCR 9122.)

Emergency legislation. — For temporary (90 day) addition, see § 10 of Digital Inclusion Emergency Act of 2006 (D.C. Act 16-467, July 25, 2006, 53 DCR 6754).

Legislative history of Law 16-210. — For Law 16-210, see notes following § 34-1731.01.

§ 34-1731.10. Not a franchise agreement.

This chapter shall not constitute, or be construed to comprise, a franchise agreement.

(Mar. 2, 2007, D.C. Law 16-210, § 11, 53 DCR 9122.)

Emergency legislation. — For temporary (90 day) addition, see § 11 of Digital Inclusion Emergency Act of 2006 (D.C. Act 16-467, July 25, 2006, 53 DCR 6754).

Legislative history of Law 16-210. — For Law 16-210, see notes following § 34-1731.01.

§ 34-1731.11. Severability.

If a provision of this chapter or its application to a particular person or circumstance is held invalid, such invalidity does not affect other persons or applications.

(Mar. 2, 2007, D.C. Law 16-210, § 12, 53 DCR 9122.)

Emergency legislation. — For temporary (90 day) addition, see § 12 of Digital Inclusion Emergency Act of 2006 (D.C. Act 16-467, July 25, 2006, 53 DCR 6754).

Legislative history of Law 16-210. — For Law 16-210, see notes following § 34-1731.01.

CHAPTER 18. EMERGENCY AND NON-EMERGENCY NUMBER TELEPHONE SYSTEM ASSESSMENTS FUND.

Sec.
34-1801. Definitions.
34-1802. Emergency and Non-Emergency Number Telephone Calling Systems Fund.
34-1803. Assessments.
34-1803.01. [Repealed].
34-1803.02. Collection and remittance of prepaid wireless E911 charge.
34-1804. [Repealed].
34-1805. Report to the Council.
34-1806. Replacement of equipment.

§ 34-1801. Definitions.

For the purposes of this chapter, the term:

(1) Repealed.

(2) "Commission" means the Public Service Commission of the District of Columbia.

(2A) "Consumer" means an individual who purchases prepaid wireless telecommunications service in a retail transaction for any purpose other than resale.

(3) "Fund" means the Emergency and Non-Emergency Number Telephone Calling Systems Fund established under § 34-1802.

(4) "Local exchange carrier" means a person that is engaged in the provision of local exchange service or exchange access.

(5) "Local exchange service" means a telecommunications service provided within an exchange area.

(6) "Person" means an individual, corporation, company, association, joint-stock company, association, firm, partnership, or other entity.

(6A) "Prepaid wireless E911 charge" means the charge that is required to be collected by a seller from a consumer in the amount established under § 34-1803.02.

(6B) "Prepaid wireless telecommunications service" means a commercial mobile radio service, as defined by § 20.3 of Title 47 of the Code of Federal Regulations, that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount.

(6C) "Provider" means a person that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

(7) "Public safety answering point" means an answering location for 911 and 311 calls originating in a given area.

(7A) "Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

(8) "Reverse 911 system" means a capability that allows the Metropolitan Police Department to forward a pre-recorded message to residents and businesses within a designated geographical area.

(8A) "Seller" means a person who sells prepaid wireless telecommunications service to another person.

(9) Repealed.

(10) "911 system" means:

(A) Equipment for connecting and out-switching a 911 call originating within a local exchange carrier's local exchange service;

(B) Trunking facilities from a local exchange carrier to a public safety answering point;

(C) Equipment necessary for routing a 911 call to a public safety answering point;

(D) Facilities and staff needed to operate a call answering center;

(E) A 311 system; and

(F) A reverse 911 system.

(11) "311 system" means a telephone system that is used to reduce emergency telephone call congestion by diverting non-emergency calls from the emergency telephone lines.

(Oct. 19, 2000, D.C. Law 13-172, § 602, 47 DCR 6308; Nov. 13, 2003, D.C. Law 15-39, § 502(a), 50 DCR 5668; Sept. 24, 2010, D.C. Law 18-223, § 3002(a), 57 DCR 6242.)

Effect of amendments. — Section 607 of D.C. Law 13-172 provided: "Except for section 606, this title shall apply as of October 1, 2000."

D.C. Law 15-39 repealed pars. (1) and (9).

Emergency legislation. — For temporary (90-day) addition of section, see § 602 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) authorization of applicability of section, see § 609 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see §§ 602 to 605, 607, of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 502(a) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 502(a) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 3002(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 13-172. — Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 15-39. — Law 15-39, the "Fiscal Year 2004 Budget Support Act of 2003", was introduced in Council and assigned Bill No. 15-218, which was referred to Committee on Whole. The Bill was adopted on first and second readings on May 6, 2003, and June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to both Houses of Congress for its review. D.C. Law 15-39 became effective on November 13, 2003.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 34-706.

Short title. — Short title of title V of Law 15-39: Section 501 of D.C. Law 15-39 provided that title V of the act may be cited as the Emergency and Non-Emergency Number Telephone Calling Systems Fund Amendment Act of 2003.

Short title: Section 3001 of D.C. Law 18-223 provided that subtitle A of title III of the act may be cited as the "Prepaid Wireless E911 Charge Amendment Act of 2010".

Delegation of Authority. — Delegation of Mayor's Authority under Title VI of D.C. Law 13-172, the "Emergency and Non-Emergency Number Telephone Calling Systems Fund Act of 2000", see Mayor's Order 2004-165, September 24, 2004 (51 DCR 9750).

Delegation of Authority pursuant to the Emergency and Non-Emergency Number Telephone Calling Systems Fund Act of 2000 and Section 3208 of the Office of Unified Communications Establishment Act of 2004, see Mayor's Order 2009-85, May 27, 2009 (56 DCR 6826).

Editor's notes. — Applicability: Section 504 of D.C. Law 15-39 provided: Section 502 shall apply as of October 1, 2003."

Section 3003 of D.C. Law 18-223 provided: "Sec. 3003. Applicability. This subtitle shall apply as of October 1, 2010."

§ 34-1802. Emergency and Non-Emergency Number Telephone Calling Systems Fund.

(a) There is established a fund designated as the Emergency and Non-Emergency Number Telephone Calling Systems Fund, which shall be separate from the General Fund of the District of Columbia and shall be used solely for the purposes set forth in subsection (b) of this section. The Fund shall be funded by a tax imposed under § 34-1803 and § 34-1803.02. All monies collected under § 34-1803 and § 34-1803.02, and all interest earned on those monies, shall be deposited into the Fund without regard to fiscal year limitation pursuant to an act of Congress. All monies deposited into the Fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section, subject to authorization by Congress in an appropriations act.

(a-1) All authority and operations of the Fund shall be administered by the Office of Unified Communications.

(b) The Fund shall be used solely to defray personnel and nonpersonnel costs incurred by the District of Columbia and its agencies and instrumentalities in providing a 911 system, and direct costs incurred by wireless carriers in providing wireless E-911 service. For purposes of this subsection, the term "costs" shall include obligations incurred both before and after October 19, 2000. The Fund shall not be used for any other purpose.

(b-1) After October 1, 2008, no monies in the Fund shall be used to defray personnel costs.

(b-2) After October 1, 2010, no monies in the Fund shall be used to defray nonpersonal costs related to overhead, including energy, rentals, janitorial services, security, or occupancy costs. The Fund shall be used solely to defray technology and equipment costs directly incurred by the District of Columbia and its agencies and instrumentalities in providing a 911 system and direct costs incurred by wireless carriers in providing wireless E-911 service. The Fund shall not be used for any other purpose.

(b-3) Notwithstanding subsection (b-2) of this section, monies in the Fund may be used to defray security costs during fiscal year 2011 and fiscal year 2012.

(c) The Mayor shall submit to the Council, as a part of the annual budget, a requested appropriation for expenditures from the Fund. Any monies received but not expended in a given fiscal year shall be retained by the Fund.

(d)(1) All income and expenses of the Fund shall be audited annually by the Chief Financial Officer, who shall transmit the audit report to the Mayor and the Council.

(A) The expenses of the annual audit shall be defrayed by the Fund.

(B) The annual audit shall include the following:

(i) The assets, liabilities, fund balance, revenue, and expenditures of the Fund;

(ii) A detailed accounting of the Fund's expenditures;

(iii) Recommendations to improve the financial management processes of the Fund;

(iv) Identification of any Fund expenditures that are not permitted under law;

(v) Recommendations to improve the language of the Fund's enabling statute to reflect best practices; and

(vi) Any other information deemed important by the Chief Financial Officer.

(2) The Chief Financial Officer shall also transmit to the Mayor and Council quarterly reports summarizing the income and expenditures of the Fund.

(e) During fiscal year 2003, the Mayor shall allocate at least $500,000 of any revenue the Fund earns due to the enactment of the Emergency and Non-Emergency Number Telephone Calling Systems Fund Amendment Act of 2002 (title VII of D.C. Law 14-307), in excess of the Fund revenue projection included in the District of Columbia's budget submission to Congress, to increase the number of emergency call-taking staff who are working during hours when call volume is above average. The Mayor may increase the number of emergency call-taking staff through such measures that he considers appropriate, including hiring new staff, authorizing overtime, employing light-duty sworn police officers or firefighters, or offering a shift differential, in accordance with Chapter 6 of Title 1 and any applicable collective bargaining agreements.

(Oct. 19, 2000, D.C. Law 13-172, § 603, 47 DCR 6308; June 5, 2003, D.C. Law 14-307, § 702(a), 49 DCR 11664; Nov. 13, 2003, D.C. Law 15-39, § 502(b), 50 DCR 5668; Dec. 7, 2004, D.C. Law 15-205, § 3222, 51 DCR 8441; Sept. 18, 2007, D.C. Law 17-20, § 3022(a), 54 DCR 7052; Aug. 16, 2008, D.C. Law 17-219, § 3002(a), 55 DCR 7598; Mar. 3, 2010, D.C. Law 18-111, § 3011(a), 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, §§ 3002(b), 3052, 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, §§ 3052, 9052(a)(1), 58 DCR 6226.)

Effect of amendments. — D.C. Law 14-307 rewrote subsec. (d) and added subsec. (e). Prior to amendment, subsec. (d) had read as follows: "(d) All income and expenses of the Fund shall be audited annually by the Mayor. The audit report shall be provided to the Council. The expenses of each audit shall be defrayed by the Fund."

D.C. Law 15-39 rewrote subsec. (a) which had read as follows: "(a) There is established a fund designated as the Emergency and Non-Emergency Number Telephone Calling Systems Fund, which shall be separate from the General Fund of the District of Columbia and shall be used solely for the purposes set forth in subsection (b) of this section. The Fund shall be funded by user fees imposed under § 34-1803. All fees collected under § 34-1803, and all interest earned on those fees, shall be deposited into the Fund without regard to fiscal year limitation pursuant to an act of Congress. All fees deposited into the Fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section, subject to authorization by Congress in an appropriations act".

D.C. Law 15-205 added subsec. (a-1).

D.C. Law 17-20, in subsec. (a), substituted "The Fund shall be funded by a tax imposed under § 34-1803 and from sources identified in § 34-1803.01" for "The Fund shall be funded by a tax imposed under § 34-1803"; and added subsec. (b-1).

D.C. Law 17-219 rewrote subsec. (b-1), which had read as follows: "(b-1) As of October 1, 2009, no more than 10 full-time equivalent employees shall be funded by the Fund. Beginning with the proposed budget for fiscal year 2009, the

Mayor shall begin the transition of full-time equivalent employees funded by the Fund so that no more than 10 remain as of October 1, 2009."

D.C. Law 18-111 added subsec. (b-2).

D.C. Law 18-223, in subsec. (a), substituted "§ 34-1803 and § 34-1803.02" for "§ 34-1803" in two places; and rewrote subsec. (d), which had read as follows: "(d) All income and expenses of the Fund shall be audited annually by the Chief Financial Officer, who shall transmit the audit report to the Mayor and Council. The expenses of the annual audit shall be defrayed by the Fund. The Chief Financial Officer shall also transmit to the Mayor and Council quarterly reports summarizing the income and expenditures of the Fund."

D.C. Law 19-21, in subsec. (a), deleted "and from sources identified in § 34-1803.01" following "§ 34-1803.02"; and added subsec. (b-3).

Emergency legislation. — For temporary (90-day) addition of section, see § 603 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) authorization of applicability of section, see § 609 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 702(a) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 702(a) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 702(a) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 502(b) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) hiring freeze exemption provisions, see § 503 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 502(b) and 503 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 3222 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3222 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 3022(a) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 3011(a) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 3011(a) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see §§ 3002(b), 3052 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 3002 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

For temporary (90 day) amendment of section, see § 3042(a) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 3042(a) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 34-1801.

Legislative history of Law 14-307. — Law 14-307, the "Fiscal Year 2003 Budget Support Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-892, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on October 1, 2002, and November 7, 2002, respectively. Signed by the Mayor on December 4, 2002, it was assigned Act No. 14-543 and transmitted to both Houses of Congress for its review. D.C. Law 14-307 became effective on June 5, 2003.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 34-1801.

Legislative history of Law 15-205. — Law 15-205, the "Fiscal Year 2005 Budget Support Act of 2004", was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 34-1514.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 34-808.01.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 34-1561.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 34-706.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 34-706.

Short title. — Short title: Section 3021 of D.C. Law 17-20 provided that subtitle C of title III of the act may be cited as the "Critical Emergency Communications Amendment Act of 2007".

Short title: Section 3001 of D.C. Law 17-219 provided that subtitle A of title III of the act may be cited as the "Emergency Communications Funding Amendment Act of 2008".

Short title: Section 3010 of D.C. Law 18-111 provided that subtitle B of title III of the act may be cited as the "E-911 and Consumer Protection Fund Amendment Act of 2009".

Delegation of Authority. — Delegation of Authority Under Title VI of DC Law 13-172, the "Emergency and Non-Emergency Number Telephone Calling Systems Fund Act of 2000", see Mayor's Order 2001-40, March 22, 2001 (48 DCR 3440).

Editor's notes. — Section 3003 of D.C. Law 18-223 provided: "Sec. 3003. Applicability. This subtitle shall apply as of October 1, 2010."

Hiring freeze exemption: Section 503 of D.C. Law 15-39 provided: "The positions identified in the Fiscal Year 2004 Spending Plan for the Fund, dated April 16, 2003, shall not be subject to a hiring freeze during Fiscal Year 2004."

Applicability: Section 504 of D.C. Law 15-39 provided: "Section 502 shall apply as of October 1, 2003."

§ 34-1803. Assessments.

(a)(1) There is imposed upon all local exchange carriers, including wireline and wireless carriers and interconnected Voice Over Internet Protocol ("VoIP") service providers, as defined by 47 C.F.R. § 9.3, that connect users who dial or enter the digits 9-1-1 to the District's public safety answering points, a monthly tax calculated on the basis of each individual telephone line sold or leased in the District as follows:

(A) For wireline local exchange service:

(i) $0.76 per exchange access line in the District of Columbia;

(ii) $0.62 per Centrex line in the District of Columbia; and

(iii) $0.62 per private branch exchange station in the District of Columbia;

(B) For wireless telephone exchange service, $0.76 for each telephone number that has a District of Columbia billing address; and

(C) For interconnected VoIP service, as defined by 47 C.F.R. § 9.3, $0.76 for each line, trunk, or path that can access to, connect with, or interface with 911 service based on primary place of use.

(2) The PBX tax per station shall be converted into a per-trunk tax based on a ratio of 8 PBX stations to one PBX trunk.

(b) Each local exchange carrier shall submit the tax imposed under subsection (a) of this section to the Mayor on a quarterly basis.

(c) As part of the annual request for appropriations from the Fund, the Mayor shall provide a report to the Council addressing whether the tax imposed under this section should be adjusted.

(d) Each local exchange carrier is authorized to state on the invoice to customers a separate line item stating the amount of tax levied pursuant to this section.

(e) The provisions of this section do not apply to prepaid wireless telecommunications service, which shall be subject to the provisions of § 34-1803.02.

(Oct. 19, 2000, D.C. Law 13-172, § 604, 47 DCR 6308; June 5, 2003, D.C. Law

14-307, § 702(b), 49 DCR 11664; Nov. 13, 2003, D.C. Law 15-39, § 502(c), 50 DCR 5668; Aug. 16, 2008, D.C. Law 17-219, § 3002(b), 55 DCR 7598; Sept. 24, 2010, D.C. Law 18-223, § 3002(c), 57 DCR 6242.)

Effect of amendments. — D.C. Law 15-39 rewrote the section.

D.C. Law 14-307 rewrote subsec. (a)(2).

D.C. Law 17-219 rewrote subsec. (a)(1).

D.C. Law 18-223 added subsec. (e).

Emergency legislation. — For temporary (90-day) addition of section, see § 604 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) authorization of applicability of section, see § 609 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 702(b) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 702(b) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 702(b) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 502(c) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 502(c) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 3002(c) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition of section, see § 3042(b) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section, see § 3042(b) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 34-1801.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 34-1802.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 34-1801.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 34-808.01.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 34-706.

Editor's notes. — Section 3003 of D.C. Law 18-223 provided: "Sec. 3003. Applicability. This subtitle shall apply as of October 1, 2010."

§ 34-1803.01. Additional revenues. [Repealed].

Repealed.

(Oct. 19, 2000, D.C. Law 13-172, § 604a, as added Sept. 18, 2007, D.C. Law 17-20, § 3022(b), 54 DCR 7052; Mar. 3, 2010, D.C. Law 18-111, § 3011(b), 57 DCR 181; Sept. 24, 2011, D.C. Law 19-21, § 9052(a)(2), 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition, see § 3022(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 3011(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 3011(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 17-20. — For Law 17-20, see notes following § 34-1514.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 34-1561.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 34-706.

§ 34-1803.02. Collection and remittance of prepaid wireless E911 charge.

(a)(1) A prepaid wireless E911 charge of 2.0% of the sales price per retail transaction occurring in the District shall be collected by the seller from the consumer, and remitted to the District. The amount of the prepaid wireless E911 charge shall be separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller.

(2) For the purposes of paragraph (1) of this subsection, a retail transaction that is effected in person by a consumer at a business location of the seller shall be treated as occurring in the District if that business location is in the District and any other retail transaction shall be treated as occurring in the District if the retail transaction is a sale at retail as described in § 47-2001(n)(1)(T) that is subject to tax pursuant to § 47-2002.

(b) The prepaid wireless E911 charge is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless E911 charges that the seller collects from consumers, except for deductions pursuant to subsection (f) of this section, including all such charges that the seller is deemed to collect where the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.

(c) If the amount of the prepaid wireless E911 charge that is collected by a seller from a consumer is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, the amount shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by the District.

(d)(1) Except as provided in paragraph (2) of this subsection, when prepaid wireless telecommunications service is sold with one or more other products or services for a single, non-itemized price, then the percentage specified in subsection (a) of this section shall apply to the entire non-itemized price unless the seller elects to apply the percentage to:

(A) The amount of the prepaid wireless telecommunications service disclosed to the consumer as a dollar amount; or

(B) The portion of the price identified by the seller that is attributable to the prepaid wireless telecommunications service by reasonable and verifiable standards from the seller's books and records that are kept in the regular course of business for other purposes, including non-tax purposes.

(2) If a minimal amount of prepaid wireless telecommunications service is sold with a prepaid wireless device for a single, non-itemized price, then the seller may elect not to apply the percentage specified in paragraph (1) of this subsection to the transaction. For the purposes of this paragraph, an amount of service denominated as 10 minutes or less, or $5 or less, is minimal.

(e) The Office of Tax and Revenue shall establish regulations governing collection, remittance, and other administrative provisions that are consistent with existing provisions governing the collection, remittance, and administration of the tax imposed by § 47-2002.

(f) A seller shall be permitted to deduct and retain 3% of prepaid wireless E911 charges that are collected by the seller from consumers.

(Oct. 19, 2000, D.C. Law 13-172, § 604b, as added Sept. 24, 2010, D.C. Law 18-223, § 3002(d), 57 DCR 6242.)

Emergency legislation. — For temporary (90 day) addition of section, see § 3002(d) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 34-706.

Editor's notes. — Section 3003 of D.C. Law 18-223 provided: "Sec. 3003. Applicability. This subtitle shall apply as of October 1, 2010."

§ 34-1804. Removal of 911 system costs from base rates. [Repealed].

Repealed.

(Oct. 19, 2000, D.C. Law 13-172, § 605, 47 DCR 6308; Nov. 13, 2003, D.C. Law 15-39, § 502(d), 50 DCR 5668.)

Emergency legislation. — For temporary (90-day) addition of section, see § 605 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) authorization of applicability of section, see § 609 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) repeal of section, see § 502(d) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 502(d) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 34-1801.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 34-1801.

§ 34-1805. Report to the Council.

Not later than September 15, 2003, the Mayor shall submit to the Council an analysis of the expenses of the Fund, which analysis shall include a recommendation as to whether the tax imposed under § 34-1803 should be adjusted. In preparing this analysis:

(1) It shall be assumed that funding for call center operating personnel will be shifted from the Fund to the General Fund of the District of Columbia; and

(2) A replacement reserve schedule for all technology equipment and software shall be used.

(Oct. 19, 2000, D.C. Law 13-172, § 605a, as added Nov. 13, 2003, D.C. Law 15-39, § 502(c), 50 DCR 5668.)

Emergency legislation. — For temporary (90-day) addition, see § 502(e) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20 2003, 50 DCR 5613).

For temporary (90 day) addition, see § 502(e) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 34-1801.

§ 34-1806. Replacement of equipment.

No later than October 1, 2007, the Office of Unified Communications shall

establish a schedule for the replacement of equipment for the 911 system. The schedule shall be updated on February 1 of each subsequent year.

(Oct. 19, 2000, D.C. Law 13-172, § 605b, as added Sept. 18, 2007, D.C. Law 17-20, § 3022(c), 54 DCR 7052.)

Emergency legislation. — For temporary (90 day) addition, see § 3022(c) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — For Law 17-20, see notes following § 34-1514.

CHAPTER 18A. PAY TELEPHONES.

Sec.
34-1831. Pay telephone service providers.

§ 34-1831. Pay telephone service providers.

(a) The Public Service Commission shall have the power and authority to prescribe rules and regulations for the operation, maintenance, and location of outdoor pay telephones in the District of Columbia.

(b) The Commission shall, by rules or regulations, establish standards:

(1) To certify a pay telephone service provider seeking to provide pay telephone services in the District of Columbia;

(2) For the registration, renewal of a registration for a pay telephone, and transfer of ownership of a registered pay telephone;

(3) For the installation and removal of a pay telephone;

(4) To investigate a consumer complaint regarding pay telephone service; and

(5) to establish operating requirements for all outdoor pay telephones.

(c) The Commission shall by regulation or order prescribe procedures for reviewing any complaint relating to pay telephone services in the District of Columbia. The regulation or order shall include provisions for a formal hearing, decision, and appeal arising from any complaint.

(d)(1) In weighing evidence regarding whether a pay telephone constitutes a public nuisance, the Public Service Commission shall give great weight to the:

(A) Written recommendation of the Advisory Neighborhood Commission in which the pay telephone is located or proposed to be located; and

(B) Written statement or testimony of a member of the Metropolitan Police Department.

(2) For the purpose of this section only, great weight means that, unless there is a compelling reason to do otherwise, the Public Service Commission shall defer to the opinion of the Metropolitan Police Department or Advisory Neighborhood Commission.

(Apr. 12, 2005, D.C. Law 15-342, § 201, 52 DCR 2346.)

Cross references. — Electric light and power companies, special acts, generally, see § 34-1401 et seq.

Mayor, council and other officers, police power regulations, see § 1-303.03.

Public roads and bridges, jurisdiction in mayor, see § 9-101.02.

Emergency legislation. — For temporary (90 day) addition, see § 201 of Omnibus Utility Emergency Amendment Act of 2005 (D.C. Act 16-12, January 28, 2005, 52 DCR 2945).

Legislative history of Law 15-342. — Law 15-342, the "Omnibus Utility Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-872 which was referred to the Committee on Public Interest. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 31, 2005, it was assigned Act No. 15-760 and transmitted to both Houses of Congress for its review. D.C. Law 15-342 became effective on April 12, 2005.

CHAPTER 19. TELEGRAPH AND TELEPHONE COMPANIES.

Subchapter I. Additional Poles, Wires, and Conduits, 1888

Sec.
34-1901.01. Additional telegraph and telephone wires prohibited on streets; extensions.

Subchapter II. Telephone Poles, Wires, and Conduits, 1902

34-1911.01. Removal of telephone poles and wires; area of removal; duties of Mayor; extension of conduits.
34-1911.02. Plans of conduits to be submitted to Mayor; permits; removal of poles; wires for house connections; telephone companies.
34-1911.03. Penalties.
34-1911.04. Erection and maintenance of telephone poles in alleys; poles outside designated limit; temporary permits.
34-1911.05. Regulations for inspection; ducts for use of fire and police wires.
34-1911.06. Repairs and renewals.
34-1911.07. Right to alter, amend, or repeal reserved.

Subchapter III. Telephone Poles, Wires, and Conduits, 1905

Sec.
34-1921.01. Removal of telegraph poles and wires; duties of Mayor; extension of conduits.
34-1921.02. Plans of conduits to be submitted to Mayor; permits; removal of poles; wires for house connections; telegraph companies.
34-1921.03. Penalties.
34-1921.04. Erection and maintenance of telegraph poles in alleys; poles outside designated limits; temporary permits.
34-1921.04a. Conduits in public parks or reservations.
34-1921.05. Regulations for inspection; ducts for use of fire and police wires.
34-1921.06. Repairs and renewals.
34-1921.07. Right to alter, amend, or repeal reserved; rights under United States Code preserved.
34-1921.08. Rights to build and lay conduits not compensable in event of condemnation.

Subchapter I. Additional Poles, Wires, and Conduits, 1888.

§ 34-1901.01. Additional telegraph and telephone wires prohibited on streets; extensions.

The Mayor of the District of Columbia shall not permit or authorize any additional telegraph, telephone, electric lighting or other wires to be erected or maintained on or over any of the streets or avenues of the City of Washington; provided, that the Mayor of the District may, under such reasonable conditions as he may prescribe, authorize the wires of any electric light company existing on July 18, 1888, and then operating in the District of Columbia, to be laid under any street, alley, highway, footway or sidewalk in the District, whenever in his judgment the public interest may require the exercise of such authority, such privileges as may be granted hereunder to be revocable at the will of Congress without compensation and no such authority to be exercised after the termination of the 50th Congress.

(July 18, 1888, 25 Stat. 323, ch. 676, § 1.)

Cross references. — Electric light and power companies, wiring permits pending conduit system plan, see § 34-1402.

Telegraph and telephone companies, construction in public parks and reservations, see § 34-1921.04a.

Telegraph and telephone companies, rules and regulations, inspections, fire alarm and police patrol wiring, see §§ 34-1911.05 and 34-1921.05.

Prior Codifications. — 1981 Ed., § 43-1401.

1973 Ed., § 43-1401.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Moratorium on the Construction

of Certain Telecommunications Towers Temporary Act of 2001 (D.C. Law 14-17, July 10, 2001, law notification 48 DCR 6593).

Emergency legislation. — For temporary (90 day) moratorium on construction of telecommunications towers, see § 2 of Moratorium on the Construction of Certain Telecommunications Towers Emergency Act of 2001 (D.C. Act 14-32, April 2, 2001, 48 DCR 3344).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter II. Telephone Poles, Wires, and Conduits, 1902.

§ 34-1911.01. Removal of telephone poles and wires; area of removal; duties of Mayor; extension of conduits.

All telephone poles and wires attached thereto not the property of the United States or the District of Columbia existing June 20, 1902, upon the streets and avenues within the section of the District of Columbia bounded by a line beginning at 2nd and B Streets Southeast and running thence along B Street south, 3rd Street west, Missouri Avenue, 6th Street west, B Street north, 23rd Street west, Rock Creek, Cincinnati Street, Columbia Road, 16th Street west (extended), Park Street, Whitney Avenue, 11th Street west, R Street north, New Jersey Avenue, C Street north, and 2nd Street east to the point of beginning, except as hereinafter provided, shall from time to time, as may be prescribed by the Mayor of said District, be taken down and removed. The work of taking down and removing said poles and wires shall be done under the direction of said Mayor, and it is hereby made the duty of said Mayor to enforce compliance with the provisions of this subchapter as expeditiously as may be consistent with the public interests; and the said Mayor is hereby empowered from time to time to authorize any individual, company, or corporation operating on June 20, 1902, and maintaining a telephone plant or system, partly overhead and partly underground, in the District of Columbia, to extend and enlarge its system of underground conduits, subsidiaries, and manholes in or under any or all of the streets, avenues, alleys, lanes, or other public highways in said city and District as may be requisite and necessary for the purposes of this subchapter and for the reception of such other cables and wires as may be reasonably required in the future by the growth of such individual, company, or corporation or to adequately meet the requirements of the public for telephone service.

(June 20, 1902, 32 Stat. 393, ch. 1136, § 1.)

Section references. — This section is referred to in sections 34-1911.02 to 34-1911.04, and 34-1911.06.

Prior Codifications. — 1981 Ed., § 43-1402.

1973 Ed., § 43-1402.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1911.02. Plans of conduits to be submitted to Mayor; permits; removal of poles; wires for house connections; telephone companies.

From time to time any individual, company, or corporation, maintaining and operating on June 20, 1902, a telephone plant or system in said District, partly overhead and partly underground, shall prepare and submit to the said Mayor a plan or plans, or application or applications, in writing, showing the streets, avenues, alleys, lanes, and other public highways in or under which it is proposed to construct conduits, subsidiaries, or manholes, and giving the general dimensions, length, and course thereof, and before any such conduit, subsidiary, or manhole is constructed it shall be necessary to obtain the approval and permission of said Mayor. Said Mayor is empowered to require that all proposed conduits, subsidiaries, and manholes shall be constructed in accordance with the approved plan or permit; and upon the approval by said Mayor of any such plan, or the issuing of any such permit, providing for the construction of underground conduits, subsidiaries, or manholes within the section in said District described in § 34-1911.01 the construction therein provided for shall be proceeded with diligently, and upon the completion thereof, or as soon thereafter as may be, without impairing the efficiency of the telephone service in said District, the individual, company, or corporation constructing such conduits, subsidiaries, or manholes shall place its cables and wires therein and take down and remove from the streets and avenues in which such conduits are constructed all poles and wires except such as said Mayor may, in accordance with the provisions of this subchapter, permit to remain for the purpose of distributing wires for house connections.

(June 20, 1902, 32 Stat. 393, ch. 1136, § 2.)

Section references. — This section is referred to in § 34-1911.03.

Prior Codifications. — 1981 Ed., § 43-1403.

1973 Ed., § 43-1403.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1911.03. Penalties.

Any individual, company, or corporation owning and maintaining such poles and wires attached thereto on or over any street or avenue within the section of the District described in § 34-1911.01 who shall willfully neglect or refuse to remove the same, as provided in § 34-1911.02, shall be liable to a penalty of not more than $25 for each and every day during which such failure to remove said poles and wires shall continue, which amount may be recovered by the District of Columbia in any court of competent jurisdiction.

(June 20, 1902, 32 Stat. 394, ch. 1136, § 3.)

Prior Codifications. — 1981 Ed., § 43-1404. 1973 Ed., § 43-1404.

§ 34-1911.04. Erection and maintenance of telephone poles in alleys; poles outside designated limit; temporary permits.

Said Mayor is empowered to authorize the erection and maintenance of poles in the alleys of said city and District and the stringing thereon of telephone conductors from alley poles or housetop fixtures in one square to alley poles or housetop fixtures in another square for the purpose of enabling house connections to be made, and also to authorize the erection of telephone poles in the District of Columbia outside the limits of the section of said District described in § 34-1911.01 and the stringing thereon of telephone conductors for house connections or for connection with lines outside the District of Columbia; also to authorize the erection of such poles and the stringing thereon of such wires in the streets and avenues of said city and District in the parts thereof in which there are no public alleys, and in such other places as the public interests do not require that the lines be placed underground, or in places where it shall be deemed by said Mayor impracticable to advantageously place or operate such lines underground. During the progress of the work provided for in § 34-1911.01 said Mayor is also empowered to issue temporary permits for the erection and maintenance of poles and overhead conductors in places where the lines are ultimately to be placed underground, but where the work can not be immediately done because of the greater urgency of work in other localities, or for other reasons satisfactory to said Mayor; but in issuing such temporary permits said Mayor shall bear in mind the purpose and policy of this subchapter, which is to cause to be removed from the streets and avenues within the section of said District described in § 34-1911.01 all poles and wires attached thereto, except as hereinbefore provided, as expeditiously as may be without interfering with or impairing the efficiency of the telephone service in

said District and without denying to the public reasonable telephone facilities at all times.

(June 20, 1902, 32 Stat. 394, ch. 1136, § 4.)

Prior Codifications. — 1981 Ed., § 43-1405.

1973 Ed., § 43-1405.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1911.05. Regulations for inspection; ducts for use of fire and police wires.

All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of this subchapter shall be subject to such reasonable regulations as the Council of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires; provided, that in all conduits so constructed, such space shall be furnished to the District government as may be necessary for purposes related exclusively to the government and public safety, free of charge; provided further, that the number of ducts so reserved in any one conduit shall not be more than 2.

(June 20, 1902, 32 Stat. 395, ch. 1136, § 5; Apr. 12, 2005, D.C. Law 15-342,§ 305, 52 DCR 2346.)

Prior Codifications. — 1981 Ed., § 43-1406.

1973 Ed., § 43-1406.

Effect of amendments. — D.C. Law 15-342 rewrote this section which had read as follows: "All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of this subchapter shall be subject to such reasonable regulations as the Council of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires; provided, that in all conduits so constructed such space shall be furnished to the District of Columbia as may be necessary for its fire alarm or police patrol wires or cables, carrying low potential currents of electricity, free of charge; and provided further, that the number of ducts so reserved in any 1 conduit shall not be more than 3."

Legislative history of Law 15-342. — For Law 15-342, see notes following § 34-401.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(321) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1911.06. Repairs and renewals.

The said Mayor is empowered to authorize any such individual, company, or corporation owning and operating on June 20, 1902, any lines of street poles and wires and any alley poles or alley-pole line within the District of Columbia and outside of the section described in § 34-1911.01 to continue to maintain the same, with such repairs and renewals as may be necessary to keep them in good order and condition of repair, and to add thereto such poles and wires as may be necessary for the purpose of making house connections or for connecting with telephone lines outside the District of Columbia.

(June 20, 1902, 32 Stat. 395, ch. 1136, § 6.)

Prior Codifications. — 1981 Ed., § 43-1407.

1973 Ed., § 43-1407.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1911.07. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal this subchapter.

(June 20, 1902, 32 Stat. 395, ch. 1136, § 7.)

Prior Codifications. — 1981 Ed., § 43-1408.

1973 Ed., § 43-1408.

Subchapter III. Telephone Poles, Wires, and Conduits, 1905.

§ 34-1921.01. Removal of telegraph poles and wires; duties of Mayor; extension of conduits.

All telegraph poles and the wires attached thereto, not the property of the United States or the District of Columbia, upon the streets, avenues and alleys on March 3, 1905 within the fire limits of the District of Columbia, except as hereinafter provided, shall from time to time, as may be prescribed by the Mayor of said District, be taken down and removed. The work of taking down and removing said poles and wires shall be done under the direction of said Mayor, and it is hereby made the duty of said Mayor to enforce compliance with the provisions of this subchapter as expeditiously as may be consistent with the public interests; and the said Mayor is hereby empowered, from time to

time, to authorize any company or corporation on March 3, 1905, or thereafter operating and maintaining a telegraph plant or system in the District of Columbia to locate and construct a system of underground conduits, subsidiaries, and manholes in or under any or all of the streets, avenues, alleys, lanes, or other public highways in said District, as may be requisite and necessary for the purpose of this subchapter and for the reception of such other conduits, cables, and wires as may be reasonably required in the future by the growth of such company or corporation or its assigns, or to adequately meet the requirements of the public for telegraph service.

(Mar. 3, 1905, 33 Stat. 984, ch. 1415, § 1.)

Section references. — This section is referred to in §§ 34-1921.02, 34-1921.03, 34-1921.04, 34-1921.06, and 34-1921.08.

Prior Codifications. — 1981 Ed., § 43-1409.

1973 Ed., § 43-1409.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1921.02. Plans of conduits to be submitted to Mayor; permits; removal of poles; wires for house connections; telegraph companies.

From time to time, any company or corporation, or its assigns, on March 3, 1905, or thereafter maintaining and operating a telegraph plant or system in said District, shall prepare and submit to the said Mayor a plan or plans or application or applications, in writing, showing the streets, avenues, alleys, lanes, and other public highways in or under which it is proposed to construct conduits, subsidiaries, or manholes, and giving the general dimensions, length, and course thereof; and before any such conduit, subsidiary, or manhole is constructed it shall be necessary to obtain the approval and permission of said Mayor. Said Mayor is empowered to require that all proposed conduits, subsidiaries, and manholes shall be constructed in accordance with the approved plan or permit; and upon the approval by said Mayor of any such plan, or the issuing of any such permit, providing for the construction of underground conduits, subsidiaries, or manholes within the said limits described in § 34-1921.01, or in such part thereof as said Mayor shall require and direct, the construction therein provided for shall be proceeded with diligently, and upon the completion thereof, or as soon thereafter as may be without impairing the efficiency of the telegraph service in said District, the company or corporation constructing such conduits, subsidiaries, or manholes shall place its cables and wires therein and take down and remove from the streets and avenues in which such conduits are constructed all poles and the wires

thereon, except such as said Mayor may, in accordance with the provisions of this subchapter, permit to remain for the purpose of distributing wires for house or other connections.

(Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 2.)

Section references. — This section is referred to in § 34-1921.08.

Prior Codifications. — 1981 Ed., § 43-1410.

1973 Ed., § 43-1410.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1921.03. Penalties.

Any company or corporation now or hereafter owning and maintaining such poles and wires attached thereto on or over any street or avenue within the said limits described in § 34-1921.01, which shall willfully neglect or refuse to remove the same, as provided in § 34-1921.01, shall be liable to a penalty of not more than $25 for each and every day during which such failure to remove said poles and wires shall continue, which amount may be recovered by the District of Columbia in any court of competent jurisdiction.

(Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 3.)

Prior Codifications. — 1981 Ed., § 43-1411.

1973 Ed., § 43-1411.

§ 34-1921.04. Erection and maintenance of telegraph poles in alleys; poles outside designated limits; temporary permits.

Said Mayor is empowered to authorize the erection and maintenance of poles in the alleys of said District, and the stringing thereon of wires or conductors for telegraph purposes from alley poles or housetop fixtures in one square to alley poles or housetop fixtures in another square for the purpose of enabling house connections to be made, and to authorize the erection of poles and the stringing thereon of wires on and upon the streets and avenues of said District in the parts thereof in which there are no public alleys and in such places as the public interest do not require that the lines be placed underground, or in places where it shall be deemed by said Mayor impracticable to advantageously place or operate such lines underground. During the progress of the work provided for in § 34-1921.01 said Mayor is also empowered to issue temporary permits for the erection and maintenance of poles and overhead conductors in places where the lines are ultimately to be placed underground,

where the work cannot be immediately done because of the greater urgency of work in other localities, or for other reasons satisfactory to said Mayor; but in issuing such temporary permits said Mayor shall bear in mind the purpose and policy of this subchapter, which is to cause to be removed from the streets and avenues within the said limits described in § 34-1921.01 all poles and wires attached thereto, except as hereinbefore provided, as expeditiously as may be without interfering with or impairing the efficiency of the telegraph service in said District and without denying to the public reasonable telegraph facilities.

(Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 4.)

Section references. — This section is referred to in § 34-1921.08.

Prior Codifications. — 1981 Ed., § 43-1412.

1973 Ed., § 43-1412.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1921.04a. Conduits in public parks or reservations.

Any officer of the United States government charged with the care, maintenance, and supervision of any public park or reservation may grant permission to any company or corporation maintaining and operating a telegraph plant or system in said District on March 3, 1905, or thereafter, upon application being made therefor, to construct conduits, subsidiaries, or manholes in said park or reservation, under such reasonable regulations as said officer may prescribe, unless, in the judgment of said officer, said construction will result in injury to the United States or its properties.

(Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 4a.)

Prior Codifications. — 1981 Ed., § 43-1413.

1973 Ed., § 43-1413.

§ 34-1921.05. Regulations for inspection; ducts for use of fire and police wires.

All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of this subchapter shall be subject to such reasonable regulations as the Council of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires; provided, that in all conduits so constructed, such space shall be furnished to the District government and the United States as may be necessary for purposes related exclusively to the government and

public safety, free of charge; provided further, that the number of ducts so reserved in any one conduit shall not be more than 2.

(Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 5; Apr. 12, 2005, D.C. Law 15-342,§ 306, 52 DCR 2346.)

Section references. — This section is referred to in § 34-1921.08.

Prior Codifications. — 1981 Ed., § 43-1414.

1973 Ed., § 43-1414.

Effect of amendments. — D.C. Law 15-342 rewrote this section which had read as follows: "All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of this subchapter shall be subject to such reasonable regulations as the Council of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires; provided, that in all underground conduits so constructed such space shall be furnished to the said District of Columbia and the United States as may be necessary for their telegraph, fire alarm, and police patrol wires or cables carrying low potential currents of electricity, free of charge; and provided further, that the number of ducts so reserved in any one conduit shall not be more than 2."

Legislative history of Law 15-342. — For Law 15-342, see notes following § 34-401.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(322) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1921.06. Repairs and renewals.

The said Mayor is empowered to authorize any such company or corporation owning and operating lines of street poles and wires on March 3, 1905, or thereafter and any alley poles or alley-pole line or housetop wires within the said District and outside of the limits described in § 34-1921.01 to continue to maintain the same, with such repairs and renewals as may be necessary to keep them in good order and condition of repair, and to add thereto such poles and wires as may be necessary for their telegraphic purposes.

(Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 6.)

Prior Codifications. — 1981 Ed., § 43-1415.

1973 Ed., § 43-1415.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-1921.07. Right to alter, amend, or repeal reserved; rights under United States Code preserved.

Congress reserves the right to alter, amend, or repeal this subchapter, but nothing herein shall abridge or lessen the rights granted telegraph companies under Title 65, § 5263 [repealed] and the following, United States Revised Statutes of the Code of the Laws of the United States of America.

(Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 7.)

Section references. — This section is referred to in § 34-1921.08.

Prior Codifications. — 1981 Ed., § 43-1416.

1973 Ed., § 43-1416.

References in text. — Sections 5263 to 5269, inclusive, of the Revised Statutes, referred to in this section, were repealed by the Act of July 16, 1947, 61 Stat. 327, ch. 256, § 1.

§ 34-1921.08. Rights to build and lay conduits not compensable in event of condemnation.

If at any time the District of Columbia or the national government shall acquire, by purchase, condemnation proceedings, or otherwise, the property of any telegraph company in the District of Columbia, nothing shall then be paid for the rights accorded under §§ 34-1921.01 to 34-1921.07, inclusive, to build and lay such conduits.

(Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 8.)

Prior Codifications. — 1981 Ed., § 43-1417.

1973 Ed., § 43-1417.

CHAPTER 20. TELECOMMUNICATIONS COMPETITION.

Sec.
34-2001. Definitions.
34-2002. Regulation of local exchange carriers.
34-2003. Universal Service Trust Fund.
34-2003.01. Cases in process.
34-2004. Access to public ways.
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34-2007. Taxation of local exchange providers.
34-2008. Implementation policy.

§ 34-2001. Definitions.

For the purposes of this chapter, the term:

(1) "Bell Operating Company" ("BOC") means Bell Atlantic Company.

(2) "Cable" means coaxial cable, copper wire, fiber optic telecommunications cable, or other tangible linear transmission medium that may be used in lieu of any of the foregoing for the same purpose.

(3) "Competitive service" means any telecommunications service which satisfies the criterion in paragraph (3)(A) or (C) of this section individually, or the criteria in paragraph (3)(B) or (D) of this section in combination with any other criterion as follows:

(A) Consumer premises equipment or some other technological medium or transmission service provides functionally equivalent service and is currently and generally available in the District of Columbia from at least one supplier other than the incumbent local exchange carrier at competitive price levels;

(B) The service is nonessential, but any bottleneck service whose use is required by either a customer or provider of a competing service is presumed to be essential;

(C) The service has a high own-price elasticity of demand; and

(D) The market in which the service is offered has an HHI of below 1800 based on a showing provided by the incumbent local exchange carrier supported by an analysis of the sensitivity of its calculated HHI values to the scope of the defined geographic and product markets.

(4) "Competitive telecommunications service provider" means any provider of telecommunications service that was not an incumbent local exchange carrier on January 31, 1996.

(5) "Conduit" means any pipe or other hollow protective sleeve through which cable may be inserted.

(6) "Dialing parity" means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers, including the local exchange carrier.

(7) "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that provided telephone exchange service in such area on the date of enactment of the federal Telecommunications Act of 1996 (P.L. 104-104).

(7A) "Internet Protocol-enabled Service" means any service, capability, functionality, or application provided using Internet protocol (or any successor

protocol), that enables an end user to send or receive a communication in Internet protocol format (or any successor format), regardless of whether the communication is voice, data, or video.

(8) "Local exchange carrier" ("LEC") means any person that is engaged in the provision of telephone exchange service or exchange access. The term "local exchange carrier" does not include a person insofar as the person is engaged in the provision of a commercial mobile service.

(9) "Local exchange service" means a telecommunications service provided within an exchange area.

(10) "Market power" means the ability to raise and hold prices at levels that are above or below those which would be charged in a fully competitive environment.

(11) "Network element" means the facility or equipment used in the provision of a telecommunications service. The term "network element" also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and the information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

(12) "Number portability" means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

(13) "People's Counsel" ("OPC") means the Office of People's Counsel as established pursuant to § 34-804.

(14) "Public Service Commission" ("Commission" or "PSC") means the Public Service Commission of the District of Columbia established pursuant to § 34-801.

(15) "Public way" means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, including public utility easements or rights of way, poles, ducts, conduits, and any temporary or permanent fixtures or improvements located thereon, now or hereafter held by the District, which may be utilized for the purpose of installing and maintaining the telecommunications system of a telecommunications service provider within the District, such use being on nondiscriminatory terms and conditions.

(16) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(17) "Telecommunications carrier" means any provider of telecommunications services, except that the term does not include aggregators of telecommunications services as defined in § 226 of the Communications Act of 1934 (47 U.S.C. § 226). A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services and is a service that the United States Federal Communications Commission determines shall be treated as common carriage.

(18) "Telecommunications equipment" means equipment, other than cus-

tomer premises equipment, used by a carrier to provide telecommunications services and includes software integral to such equipment, including upgrades.

(19) "Telecommunications industry" means communications businesses using regulated or unregulated facilities or services and includes broadcasting, telecommunications, cable, computer, data transmission, software, programming, advanced messaging, and electronics.

(19A) "Telecommunications Relay Service" means a transmission service that provides the hearing-impaired or speech-impaired the ability to engage in communication by wire or radio with a non-hearing-impaired individual. The term "Telecommunications Relay Service" shall include services that enable 2-way communication between an individual who uses a telecommunications device for the deaf or other non-voice terminal device and an individual who does not use such a device.

(20) "Telecommunications service" means the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available to the public, regardless of the facilities used.

(20A) "Telecommunications service provider" means an entity that provides telecommunications services.

(21) "Telecommunications system" means the portion of a telecommunications network which has been or is to be constructed, operated, and maintained within the public ways by a provider of telecommunications services within the District, including, without limitation, all conduits, cables, manholes, handholes, splice boxes, ancillary hardware, poles, and supporting wires and anchors.

(22) "Universal service" means that evolving array of services which the Public Service Commission, taking into account advances in telecommunications and information technologies and services and pursuant to any rules promulgated by the United States Federal Communications Commission, determines should be provided at just, reasonable, and affordable rates to all District residents, including the indigent and those with disabilities, to enable them to participate effectively in the economic, academic, medical, and democratic processes of the District. In circumstances defined by the Public Service Commission, certain low-income persons or persons with disabilities shall be assisted to receive those services determined to be universal services through a fund into which all local exchange carriers will be required to contribute in such amounts as the Public Service Commission shall determine.

(23)(A) "Voice Over Internet Protocol Service" means any service that:

(i) Enables real-time 2-way voice communications that originate or terminate from the user's location using Internet protocol or a successor protocol; and

(ii) Uses a broadband connection from the user's location.

(B) The term "Voice Over Internet Protocol Service" shall include any service that permits users to receive calls that originate on the public-switched telephone network and to terminate calls on the public-switched telephone network.

(Sept. 9, 1996, D.C. Law 11-154, § 2, 43 DCR 3736; Apr. 20, 1999, D.C. Law 12-264, § 47, 46 DCR 2118; Apr. 24, 2007, D.C. Law 16-305, § 50, 53 DCR

6198; June 5, 2008, D.C. Law 17-165, § 3(a), 55 DCR 5171; Mar. 25, 2009, D.C. Law 17-353, § 172(b), 56 DCR 1117; Sept. 24, 2010, D.C. Law 18-223, § 2224(a), 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 43-1451.

Effect of amendments. — D.C. Law 16-305, in par. (22), substituted "persons or persons with disabilities" for "or disabled persons".

D.C. Law 17-165 added pars. (7A), (19A), and (23).

D.C. Law 17-353 validated a previously made technical correction in par. (22).

D.C. Law 18-223 added par. (20A).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2224(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 11-154. — Law 11-154, the "Telecommunications Competition Act of 1996," was introduced in Council and assigned Bill No. 11-258, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 21, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 25, 1996, it was assigned Act No. 11-300 and transmitted to Congress for its review. D.C. Law 11-154 became effective September 9, 1996.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 34-1253.02.

Legislative history of Law 17-165. — For Law 17-165, see notes following § 34-403.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 34-804.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 34-706.

References in text. — The federal Telecommunications Act of 1996, Pub. L. 104-104, referred to in (7), is codified throughout Title 47 of the United States Code.

§ 34-2002. Regulation of local exchange carriers.

(a) The Public Service Commission may, upon petition by the incumbent local exchange carrier and pursuant to procedures developed by the PSC, reclassify any telecommunications service offered by the incumbent local exchange carrier.

(b) Pursuant to the federal Telecommunications Act of 1996 (Public Law 104-104), the Public Service Commission shall establish a procedure to facilitate entry into the District for providers of all forms of telecommunications service in order to foster the availability of competitive telecommunications options to consumers in the District, and to encourage the development of a technological infrastructure which will afford District residents increased access to the information highway.

(c) The procedure established by the Public Service Commission shall provide that local exchange carriers will be regulated according to each LEC's respective market power in the local exchange market, and in such manner as to prohibit abuse of monopoly power and facilitate adjustments in pricing as developing competition dictates a need for market flexibility.

(d)(1) The Public Service Commission, in lieu of requiring a certificate of public convenience and necessity, shall grant any telecommunications service provider seeking to provide services within the District the authority to do so within 15 days of an applicant's filing with the Commission of a Statement of Business Operations, as described in subsection (e) of this section, and the payment of an application fee of $1000. The provider shall be exempt from any

other certification requirements if the applicant demonstrates in its Statement of Business Operations that it or its affiliates have at least three years experience providing telecommunications services pursuant to authorizations by the FCC or a state regulatory body and that it or its affiliates derives over $50 million in gross annual revenues from telecommunications services.

(2) Any telecommunications service provider possessing a certificate of convenience and public necessity to operate within the District of Columbia as of September 9, 1996 is exempted from the requirements in paragraph (1) of this subsection.

(3) For applicants other than those meeting the criteria set forth in paragraph (1) of this subsection, subsequent to the applicant's filing of the Statement of Business Operations as described in subsection (e) of this section, and the payment of an application fee of $1000, the Commission may request additional information to determine whether the applicant has sufficient experience and financial stability to ensure the continued provision of local exchange services within the District. For such applicants, the Commission may waive the minimum experience and gross annual revenue requirements if it can determine that certification is in the public interest and that the applicant has sufficient experience and financial stability to ensure the continued provision of local exchange services within the District.

(A) If the PSC requests additional information from the applicant, such request must be provided in writing within 15 days of the applicant's filing.

(B) The applicant shall be afforded 15 days to provide the additional information requested by the PSC.

(C) Upon receipt of the additional information from the applicant, the PSC must determine within 15 days whether the additional information satisfies the PSC in respect to the applicant's ability to ensure continued provision of telecommunication services to District consumers.

(D) If the PSC determines that the additional information provides the necessary assurances, the PSC shall authorize the applicant to provide services within the District of Columbia; if the Commission determines that the applicant has not demonstrated sufficient experience and financing, the applicant shall be provided written notice of the deficiency.

(e) The Statement of Business Operations required by this section shall contain, at a minimum, the following information of each telecommunications service provider:

(1) Name, address, and telephone number of corporate contact;

(2) Name, address, and telephone number of a registered agent in the District of Columbia;

(3) Telephone number for customer service;

(4) Name, address, and telephone number of a regulatory contact person;

(5) A copy of the provider's articles of incorporation;

(6) A signed tax attestation form;

(7) A brief description of the type of service to be offered;

(8) Financial statements for the last three years from the applicant or its affiliate; and

(9) Any other information the Public Service Commission may require.

(f) All local exchange carriers authorized by the PSC to provide service within the District must file and maintain tariffs with the Public Service Commission for each service offered within the District. The tariffs shall describe the service being offered, list all terms and conditions, and specify the rate or rates charged for the service.

(g) Tariffs of competitive telecommunications service providers shall not be regulated or otherwise reviewed by the Public Service Commission, except as otherwise specified in subsection (h) of this section, for interconnection, and in § 34-2003 for Universal Service Trust Fund subsidies. Tariffs filed by competitive telecommunications providers shall be deemed just and reasonable. Notwithstanding any other provision of law to the contrary, the Public Service Commission shall not regulate, fix, or prescribe the tolls, charges, rate structure, terms and conditions of service, rate base, rate of return, operating margin, earnings, cost of service, or the issuance of debt, equity, or other securities of any competitive telecommunications service provider, except that nothing in this chapter shall limit the authority of the PSC to establish service quality standards for such telecommunications service providers, to regulate terms and conditions of service (but not including rates, charges, and rate structure) to protect the public safety and welfare, provide for continued quality of telecommunications service, and safeguard the rights of consumers.

(h) All local exchange carriers in the District are required to unbundle network elements to the extent that federal law requires, and to interconnect networks and exchange local exchange service calls under terms that are reasonable and efficient.

(1) All LECs shall reciprocally terminate each other's local exchange service calls and shall financially compensate each other for this service if the PSC determines that a traffic imbalance exists. As between any two LECs, if at any time after implementation of local number portability pursuant to this chapter the traffic terminated by one provider, on a quarterly basis, is at least 5 % greater than the traffic terminated by the other provider, the two affected LECs shall mutually negotiate an agreement regarding the charges, terms, and conditions for the termination of local exchange service calls that originate on their respective networks.

(2) Any agreement adopted pursuant to this subsection shall be submitted for approval to the PSC. The PSC shall approve or reject the agreement, with written findings as to any deficiencies. If the PSC does not act to approve or reject the agreement within 90 days after submission by the LECs, the agreement shall be deemed approved. The PSC shall make a copy of each agreement approved pursuant to this subsection available for public inspection and copying within 10 days after the agreement is approved.

(3) If an agreement between the two affected providers has not been finalized within 90 days from the date one provider notifies the other provider of the traffic exchange imbalance, then either provider may petition the PSC to fix charges set at the economic costs, and the terms and conditions for the continued termination of local exchange service calls. The PSC shall resolve each issue set forth in the petition and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which one LEC received notification of the traffic imbalance.

(4) The incumbent local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved pursuant to this subsection to any other requesting LEC upon the same terms and conditions as those provided in the agreement.

(h-1) For a violation of any provision of this chapter or a violation of any rule or order issued under this chapter, after notice and a hearing, the Commission may:

(1) Suspend or revoke the certification of a telecommunications service provider;

(2) Impose a civil penalty on a telecommunications service provider;

(3) Order a refund or credit to a customer;

(4) Cancel a contract or part of a contract between a customer and a telecommunications service provider; or

(5) Issue a cease and desist order to a telecommunications service provider.

(h-2)(1) A civil penalty imposed by the Commission under this section shall not exceed $10,000 per violation.

(2) The Commission shall determine the amount of the civil penalty after considering:

(A) The number of previous violations of the telecommunications service provider;

(B) The gravity and duration of the current violation; and

(C) The good faith of the telecommunications service provider in attempting to achieve compliance after notification of the violation.

(h-3) The Commission may temporarily suspend a certification, issue a temporary cease and desist order, or take any other appropriate temporary remedial action, pending a final determination after notice and hearing, if the Commission determines that there is reasonable cause to believe that customers or the reliability of the telecommunications service in the District of Columbia will be harmed by the actions of a telecommunications service provider.

(h-4) A proceeding under this section may be initiated by the Commission, the Office of the People's Counsel, the Office of the Attorney General, or any aggrieved party.

(h-5) In connection with a proceeding under this section, a telecommunications service provider shall provide to the Commission access to any accounts, books, papers, and documents which the Commission considers necessary to resolve the matter.

(i) Regulation of the Bell Operating Company:

(1) Existing and proposed tariffs of the BOC must:

(A) Contain rates that are just and reasonable; and

(B) Ensure that the BOC does not unjustly discriminate in favor of itself or any other telecommunications provider in the provision of any telecommunications service or network element.

(2) The Public Service Commission may, pursuant to the Commission's existing procedures, suspend and reject any proposed or existing tariffs of the BOC if it fails to meet the requirements of paragraph (1) of this subsection.

(3) The BOC shall unbundle each network element and shall make those network elements available under nondiscriminatory terms and conditions filed with the PSC, including cost-based prices that are identical to those used in the provision of its own services and the services provided by its affiliates.

(4) The rate that the BOC charges for any service shall not be less than the sum of rates charged to others for any network elements unbundled pursuant to paragraph (3) of this subsection which are also used by the BOC to provide that service, and any other costs incurred by the BOC to provide that service.

(5) The incumbent LEC shall offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to noncarriers. The incumbent LEC shall not prohibit nor impose unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service, except that the Public Service Commission may prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(6) The BOC shall afford to any competitive telecommunications service provider offering, or seeking to offer, a telecommunications service reasonable and nondiscriminatory access to poles, ducts, conduits, and rights-of-way integral to the efficient transmission, routing, or other provision of local exchange service or exchange access; and the PSC shall determine the criteria for ensuring that such access shall be equal in type and quality to the access which the BOC affords to itself or to any other person, and that such access is made available by the BOC on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

(j) The BOC may petition the Public Service Commission for an alternative form of regulation, or for forbearance of regulation. The Public Service Commission shall approve or disapprove a plan for alternative regulation or for forbearance within 270 days of the BOC filing its petition, after notice and a public hearing, provided it finds that:

(1) The plan is in the public interest;

(2) The BOC has filed and received approval for a tariff for each network element; provided, that nothing in this subsection shall prohibit the Public Service Commission from implementing any settlement arrived at in respect to a formal case in process, or any future case, so long as such settlement establishes tariffs that are not inconsistent with the requirements of the federal Telecommunications Act;

(3) The plan will produce fair, just, and reasonable rates for telecommunications services in the District based upon the Commission determination that existing rates at the time the plan is approved are fair, just, and reasonable;

(4) The plan accounts for changes in technology and the structure of the telecommunications industry that are occurring;

(5) The plan specifies how customers will benefit from any efficiency gains, cost savings arising out of the regulatory change, and improvements in productivity as a result of technological change;

(6) The plan will maintain the quality and availability of telecommunications services;

(7) The plan contains adequate safeguards to ensure that the BOC does not discriminate in favor of any telecommunications provider, including itself, in the provision and pricing of any telecommunications service;

(8) The plan contains adequate safeguards to ensure that no service is receiving a subsidy, unless such a subsidy is necessary to maintain basic residential local exchange service for eligible customers pursuant to this section; and

(9) The plan does not unreasonably prejudice or disadvantage any customer class or provider of competitive services.

(k) Within 30 days of September 9, 1996, and pursuant to the authority given to State Commissions under the federal Telecommunications Act of 1996, the Public Service Commission shall initiate a proceeding to address and resolve the issues associated with competition in the local exchange, including, but not limited to:

(1) Local number portability;

(2) Unbundling;

(3) Universal service;

(4) Wholesale rates for the resale of BOC services;

(5) Numbering resources and local dialing parity;

(6) Collocation of network equipment;

(7) Directory listings and directory assistance;

(8) Service quality standards;

(9) Incentives to facilitate the involvement in the telecommunications industry in the District of Columbia of small and disadvantaged businesses, including telecommunications service providers with gross annual revenues of less than $50 million; and in addressing the issue of incentives to assist small and disadvantaged businesses, the PSC shall monitor the Federal Communications Commission implementation of § 257 [47 U.S.C. § 257] of the federal Telecommunications Act of 1996 to follow the development of strategies which may be useful to the District of Columbia; examine ways to facilitate access for eligible District of Columbia businesses to the capital and programs of the Telecommunications Development Fund established by § 714 [47 U.S.C. § 614] of the federal Telecommunications Act of 1996; and require, to the extent permissible under the federal Telecommunications Competition Act of 1996, that telecommunications providers authorized to operate in the District of Columbia agree to provide, in the manner that the existing monopoly utilities historically have agreed to provide them, contracting opportunities for small and disadvantaged businesses and employment and training programs for District residents;

(10) Strategies necessary to implement the mandate to state commissions contained in § 706 [47 U.S.C. § 157, note] of the federal Telecommunications Act of 1996 to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans, including, in particular, elementary and secondary schools and classrooms, and methods of facilitating access for eligible District of Columbia institutions to the funding

and assistance available from the National Education Technology Funding Corporation, as well as the development of incentives for telecommunications providers authorized to operate in the District of Columbia to invest appropriate resources in the National Education Technology Funding Corporation;

(11) The application of quality service standards; and

(12) Any other issues the Commission may determine to be necessary.

(l) A Public Service Commission order, including appropriate findings of fact and conclusions of law, resulting from the proceeding required pursuant to subsection (k) of this section shall be issued no later than 12 months subsequent to the initiation of that proceeding.

(m) Notwithstanding any other provisions of law, the Public Service Commission shall expend no more than $250,000, and the Office of the People's Counsel shall expend no more than $150,000 for the proceeding required by subsection (k) of this section unless either of those agencies presents to the Council of the District of Columbia a written determination that funds in excess of these amounts will be required to carry out the provisions of subsections (k) and (l) of this section along with a resolution requesting authorization to expend a specific additional amount, and that resolution shall be deemed approved if not disapproved by the Council within a 30-day period of review.

(n) Within 12 months of September 9, 1996, or upon a finding of the PSC, whichever is earlier, the Public Service Commission shall promulgate rules in respect to the notice requirements for abandonment of any service, and delineate the responsibilities, if any, incumbent upon the telecommunications service provider consequent to service abandonment.

(Sept. 9, 1996, D.C. Law 11-154, § 3, 43 DCR 3736; September 9, 1996, D.C. Law 11-155, § 25(a), 43 DCR 4213; Apr. 12, 2005, D.C. Law 15-342, § 307, 52 DCR 2346; Sept. 24, 2010, D.C. Law 18-223, § 2224(b), 57 DCR 6242.)

Cross references. — Investigations of public utilities, assessing expenses, see § 34-912.

Section references. — This section is referred to in § 34-2008.

Prior Codifications. — 1981 Ed., § 43-1452.

Effect of amendments. — D.C. Law 15-342, in subsec. (m), substituted "$250,000" for "$100,000", and substituted "$150,000" for "50,000".

D.C. Law 18-223 added subsecs. (h-1) to (h-5).

Emergency legislation. — For temporary (90 day) amendment of section, see §§ 305, 402 of Omnibus Utility Emergency Amendment Act of 2005 (D.C. Act 16-12, January 28, 2005, 52 DCR 2945).

For temporary (90 day) amendment of section, see § 2224(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 11-154. — For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

Legislative history of Law 11-155. — Law 11-155, the "Mortgage Lender and Broker Act of 1996," was introduced in Council and assigned Bill No. 11-637, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on May 7, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 19, 1996, it was assigned Act No. 11-309 and transmitted to both Houses of Congress for its review. D.C. Law 11-155 became effective on September 9, 1996.

Legislative history of Law 15-342. — For Law 15-342, see notes following § 34-401.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 34-706.

References in text. — The federal Telecommunications Act of 1996, Pub. L. 104-104, referred to in (b) and (k), is codified throughout Title 47 of the United States Code.

Resolutions. — Resolution 15-250, the "Public Service Commission Telecommunica-

tions Competition Fund Expenditure Increase Approval Resolution of 2003", was approved effective October 7, 2003.

Editor's notes. — Section 401 of D.C. Law 15-342 provided: "Sec. 401. Applicability. Sections 303(c)(1) and 307 shall apply as of October 1, 2004."

§ 34-2003. Universal Service Trust Fund.

(a) The Public Service Commission shall establish a Universal Service Trust Fund, and determine those services which shall constitute universal service in the District of Columbia, the costs of providing universal service, and the amount of subsidy needed to maintain the Universal Service Trust Fund. Any subsidy necessary to support universal service shall be separately funded out of the Universal Service Trust Fund, and administered by a Universal Service Trust Fund administrator named by the Public Service Commission.

(b)(1) Upon an annual determination by the Public Service Commission of the amount needed to support a universal service subsidy, the PSC shall bill and collect from all local exchange carriers ("LEC") and Voice Over Internet Protocol Service providers operating in the District at any time during the previous year an amount representing each carrier's share of the total universal service subsidy. To the extent permitted by federal law and regulation, the determination of each LEC's share and Voice Over Internet Protocol Service provider's share shall be in proportion to each LEC's and Voice Over Internet Protocol Service provider's total revenues for local telecommunications or telecommunications services derived from end users in the District during the previous year.

(2) The Commission may exempt from the requirements of this subsection any LEC or Voice Over Internet Protocol Service provider whose share of the total universal service subsidy the Public Service Commission determines to be de minimis.

(c) There shall be no fiscal year limitation on the funds in the Universal Service Trust Fund, and any funds unspent in one fiscal year may be used to offset the amounts required to be contributed by local exchange carriers to the fund in the next fiscal year.

(d) The universal service subsidy derived from the Universal Service Trust Fund shall be available for eligible customers regardless of the local exchange carrier which the eligible customers choose to use.

(Sept. 9, 1996, D.C. Law 11-154, § 4, 43 DCR 3736; June 5, 2008, D.C. Law 17-165, § 3(b), 55 DCR 5171; Sept. 24, 2010, D.C. Law 18-223, § 2224(c), 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 2083, 58 DCR 6226.)

Section references. — This section is referred to in § 34-2002.

Prior Codifications. — 1981 Ed., § 43-1453.

Effect of amendments. — D.C. Law 17-165, in subsec. (b), substituted "local exchange carriers and Voice Over Internet Protocol Service providers" for "local exchange carriers", and substituted "LEC's share and Voice Over Internet Protocol Service provider's share" for "LEC's share".

D.C. Law 18-223, in subsec. (b), rewrote the second sentence which had read: "The determination of each LEC's share and Voice Over Internet Protocol Service provider's share shall be in proportion to each carrier's total revenues for local exchange services provided in the District during the previous year."

D.C. Law 19-21, in subsec. (b), designated the existing text as par. (1); in subsec. (b)(1), substituted "local exchange carriers ('LEC') and

Voice Over" for "local exchange carriers and Voice Over"; and added subsec. (b)(2).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2224(c) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 11-154. — For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

Legislative history of Law 17-165. — For Law 17-165, see notes following § 34-403.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 34-706.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 34-706.

§ 34-2003.01. Cases in process.

Nothing in this chapter shall prevent the PSC from proceeding with respect to a formal case in process before the Commission so long as it is not inconsistent with the requirements of the federal Telecommunications Act of 1996.

(Sept. 9, 1996, D.C. Law 11-154, § 4a, as added Sept. 9, 1996, D.C. Law 11-155, § 25(b), 43 DCR 4213.)

Prior Codifications. — 1981 Ed., § 43-1453.1.

Legislative history of Law 11-155. — For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 34-2001.

References in text. — The federal Telecommunications Act of 1996, referred to in this section, is Pub. L. 104-104, which is codified throughout Title 47 of the United States Code.

§ 34-2004. Access to public ways.

(a) Any telecommunications provider in the District shall have the right to utilize the public right-of-ways of the District for installation, maintenance, repair, replacement, and operation of its telecommunications system on terms and conditions that are competitively neutral; provided, that nothing in this chapter shall affect the authority of the District government to manage its public ways or to require fair and reasonable compensation from the telecommunications service providers, on a nondiscriminatory basis. Any compensation the District government may require pursuant to this subsection shall be in addition to all other payments, fees, or collections required by this chapter. The Mayor shall promulgate rules to carry out the purposes of this subsection.

(b) Prior to constructing each portion of its telecommunications system located within the public ways, a telecommunications service provider shall obtain all necessary construction permits and licenses from the appropriate agency. All such construction shall be performed in compliance with applicable codes and regulations, and all facilities so constructed shall be maintained in compliance with applicable codes and regulations.

(c) The Mayor shall issue rules to establish and regulate the process through which any alteration or damage to public rights of way in the District of Columbia shall be compensated by the telecommunications service provider whose construction or repair work has altered or damaged public rights of way. The rules shall require the telecommunications service provider to repair any alteration or damage pursuant to specifications and inspection by the District of Columbia Department of Public Works, or require that the telecommunica-

tions service provider compensate the District of Columbia for the cost of repair to a public right of way.

(Sept. 9, 1996, D.C. Law 11-154, § 5, 43 DCR 3736.)

Prior Codifications. — 1981 Ed., § 43-1454.

Legislative history of Law 11-154. — For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

§ 34-2005. Access to buildings.

The Public Service Commission shall have the authority to promulgate rules to ensure that access to public and privately owned buildings is afforded in a manner which does not unjustly or unreasonably discriminate between or among providers of telecommunications services. The Commission may initiate a rulemaking proceeding pursuant to this section only after determining that (1) federal telecommunications law and regulations authorize state public utility commissions to promulgate rules regarding building access; (2) substantial evidence exists that unjust and unreasonable discrimination regarding building access impaired telecommunications services competition in the District of Columbia; and (3) that promulgation of rules by the Commission regarding building access is the only effective means of removing the impairment to competition.

(Sept. 9, 1996, D.C. Law 11-154, § 6, 43 DCR 3736.)

Prior Codifications. — 1981 Ed., § 43-1455.

Legislative history of Law 11-154. — For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

§ 34-2006. Exemptions.

(a) This chapter shall not apply to cable television services performed pursuant to an existing cable television franchise agreement with the District of Columbia which is in effect on September 9, 1996. To the extent that a cable television company seeks to provide local exchange services within the District of Columbia, such company shall be regulated under the provisions of this chapter for their local exchange services.

(b) Pursuant to the federal Telecommunications Act of 1996, this chapter shall not apply to licensed or unlicensed wireless services authorized by the Federal Communications Commission operating in the District of Columbia.

(c) This chapter shall not:

(1) Apply to the provision, rates, charges, or terms of service of Voice Over Internet Protocol Service or Internet Protocol-enabled Service;

(2) Alter the authority of the Commission to enforce the requirements as are otherwise provided for, or allowed by, federal law, including the collection of Telecommunications Relay Service fees and universal service fees;

(3) Alter the authority of the Office of Cable Television and Telecommunications with respect to the provision of video services in the District of Columbia; or

(4) Alter the Commission's existing authority over the regulation of circuit-switched local exchange services in the District of Columbia.

(Sept. 9, 1996, D.C. Law 11-154, § 7, 43 DCR 3736; June 5, 2008, D.C. Law 17-165, § 3(c), 55 DCR 5171.)

Prior Codifications. — 1981 Ed., § 43-1456.

Effect of amendments. — D.C. Law 17-165 added subsec. (c).

Legislative history of Law 11-154. — For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

Legislative history of Law 17-165. — For Law 17-165, see notes following § 34-403.

References in text. — The federal Telecommunications Act of 1996, referred to in (b), is Pub. L. 104-104, which is codified throughout Title 47 of the United States Code.

§ 34-2007. Taxation of local exchange providers.

Notwithstanding any other provisions of law, each local exchange carrier in the District of Columbia shall be subject to the same District of Columbia taxes and fees and shall be entitled to the same tax exemptions, including, but not limited to, personal property taxes. For purposes of District of Columbia taxation only, a local exchange carrier shall include a telephone company that sells public utility services. For the taxation purposes of this chapter, the term "public utility services" shall include all local telecommunications services sold for a fee directly to the public irrespective of the technology used to provide the services, including, but not limited to, local commercial mobile services.

(Sept. 9, 1996, D.C. Law 11-154, § 8, 43 DCR 3736.)

Prior Codifications. — 1981 Ed., § 43-1457.

Legislative history of Law 11-154. — For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

§ 34-2008. Implementation policy.

(a) In the implementation of this chapter, it shall be the policy of the District government to promote the hiring, education, and training of District residents in every facet of telecommunications endeavor in the District.

(b) Pursuant to this chapter, it shall be the policy of the District government to promote the utilization of small, disadvantaged, women-owned, and District businesses in the establishment and contracting processes regarding telecommunications in the District.

(c) Nothing in this chapter shall be construed to contravene any provision in the federal Telecommunications Act of 1996 passed by the U.S. Congress in January and signed into law by President Clinton in February or to be inconsistent with the findings of the PSC in a proceeding pursuant to § 34-2002(k).

(d) Two years after June 5, 2008, the People's Counsel shall issue a report on the effect of the absence of local regulation of Voice Over Internet Protocol Service telecommunications service in the District of Columbia. The report shall be a general analysis of the impacts and effects of the VOIP act on

consumers. The report shall also include an examination of the market availability of Voice Over Internet Protocol Service technology to consumers.

(Sept. 9, 1996, D.C. Law 11-154, § 10, 43 DCR 3736; Mar. 24, 1998, D.C. Law 12-81, § 52, 45 DCR 745; June 5, 2008, D.C. Law 17-165, § 3(d), 55 DCR 5171.)

Prior Codifications. — 1981 Ed., § 43-1458.

Effect of amendments. — D.C. Law 17-165 added subsec. (d).

Legislative history of Law 11-154. — For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 17-165. — For Law 17-165, see notes following § 34-403.

References in text. — The federal Telecommunications Act of 1996, referred to in (c), is Pub. L. 104-104, which is codified throughout Title 47 of the United States Code.

SUBTITLE VI. WATER AND SEWER.

CHAPTER 21. SANITARY SEWAGE WORKS.

Subchapter I. District Sanitary Sewage Works

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Subchapter I. District Sanitary Sewage Works.

§ 34-2101. Definitions.

For the purposes of this subchapter:

(1) The term "sanitary sewage" means:

(A) Domestic sewage with storm and surface water limited;

(B) Sewage discharging from sanitary conveniences;

(C) Commercial or industrial wastes; and

(D) Water supply after it has been used.

(2) The term "stormwater sewage" means liquid flowing in sewers resulting directly from precipitation.

(3) The term "combined sewage" means sewage containing both sanitary sewage and stormwater sewage.

(4) The term "sewer" means a pipe or conduit carrying sewage.

(5) The term "sanitary sewer" means a sewer which carries sanitary sewage.

(6) The term "stormwater sewer" means a sewer which carries stormwater sewage.

(7) The term "combined sewer" means a sewer which carries both sanitary sewage and stormwater sewage.

(8) The term "sanitary sewage works" means a system of sanitary and combined sewers, appurtenances, pumping stations, and treatment works for conveying, treating, and disposing of sanitary sewage.

(9) The term "stormwater sewer system" means a system of sewers, appurtenances, and pumping stations for conveying and disposing of stormwater sewage.

(10) The term "combined sewer system" means a system of sewers and appurtenances conveying both sanitary sewage and stormwater sewage.

(May 18, 1954, 68 Stat. 104, ch. 218, title II, § 201.)

Prior Codifications. — 1981 Ed., § 43-1601. 1973 Ed., § 43-1601.

§ 34-2102. Use of the General Fund for sanitary sewage works.

Subject to appropriations, amounts in the General Fund of the District of Columbia (including any special account therein) as established by the Revenue Funds Availability Act of 1975 [D.C. Law 1-42] shall be available for use by or under the direction and control of the Mayor of the District of Columbia for:

(1) The construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District, including all expenses;

(2) Payment of a portion of such administrative expenses as may not be wholly allocated to the sanitary sewage works or to any other sewage works of the District, but which expenses are incurred in connection with the operation of the sanitary sewage works and either or both the stormwater sewer system and the combined sewer system. The portion of such expenses to be paid from the General Fund of the District of Columbia (including any special account therein) shall be fixed from time to time by the Mayor at such a percentage of the total of such expenses for the said sewer systems as the Mayor, in his discretion, may determine;

(3) Payment of such portion of all expenses for the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the combined sewer system of the District as the Mayor, in his discretion, determines to be attributable to the sanitary sewer function of such combined sewer system;

(4) Payment of the District's contribution to the expenses of the Interstate Commission on the Potomac River basin;

(5) Payments by the District to agencies in the State of Maryland providing services to the District for conveying, treating, or disposing of sanitary sewage; provided, that the said fund shall not be available to pay the cost of providing sewage service to institutions of the District located in the State of Maryland;

(6) Payments to other funds of the District for such expenses or estimated expenses as are or may be incurred in the administration of this subchapter;

(7) Payment to the United States Treasury of the interest, in accordance with the provisions of this subchapter, on loans to the District for the purposes of this Act;

(8) Repayment to the United States Treasury of the principal amount of each loan made to the District in accordance with the provisions of this chapter, and of any advancements made to the District in accordance with the provisions of § 34-2103; and

(9) Refund of part or all of any sanitary sewer service charges erroneously paid; provided, that application for refund shall be made within 2 years after such erroneous payment.

(May 18, 1954, 68 Stat. 104, ch. 218, title II, § 203; Jan. 22, 1976, D.C. Law 1-42, § 3(f)(2), 22 DCR 6313.)

Prior Codifications. — 1981 Ed., § 43-1602.

1973 Ed., § 43-1603.

Legislative history of Law 1-42. — For legislative history of D.C. Law 1-42, see Historical and Statutory Notes following § 34-2401.03.

References in text. — "This Act," referred to in paragraph (7) of this section, is the District of Columbia Public Works Act of 1954, 68 Stat. 104, ch. 218.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2103. Advances for sanitary sewage works; reimbursement for amounts advanced.

The Secretary of the Treasury, notwithstanding the provisions of the District of Columbia Appropriation Act, approved June 29, 1922 (42 Stat. 668), is authorized and directed to advance, on the requisition of the Mayor of the District of Columbia, made in the manner now prescribed by law, out of any money in the Treasury of the United States not otherwise appropriated, such sums as may be necessary, from time to time, to meet the expenses of the District in connection with the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District, as authorized by Congress, and such amounts so advanced shall be reimbursed by the said Mayor to the Treasury out of money in the General Fund of the District of Columbia (including any special account therein).

(May 18, 1954, 68 Stat. 105, ch. 218, title II, § 204; Jan. 22, 1976, D.C. Law 1-42, § 3(f)(3), 22 DCR 6314.)

Section references. — This section is referred to in § 34-2102.

Prior Codifications. — 1981 Ed., § 43-1603.

1973 Ed., § 43-1604.

Legislative history of Law 1-42. — For legislative history of D.C. Law 1-42, see Historical and Statutory Notes following § 34-2401.03.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office

of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2104. Council authorized to establish charges for sanitary sewer service. [Repealed].

Repealed.

(May 18, 1954, 68 Stat. 106, ch. 218, title II, § 206; Jan. 22, 1976, D.C. Law 1-42, § 3(f)(4), 22 DCR 6314; repealed pursuant to § 303 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1604.

1973 Ed., § 43-1605.

Legislative history of Law 11-111. — Law 11-111, the "Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996," was introduced in Council and assigned Bill No. 11-102, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 7, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 31, 1996, it was assigned Act No. 11-201 and transmitted to both Houses of Congress for its review. D.C. Law 11-111 became effective on April 18, 1996.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 303 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2105. Sanitary sewer service charge. [Repealed].

Repealed.

(Oct. 21, 1975, D.C. Law 1-23, title VII, § 701(b), 22 DCR 2115; June 15, 1976, D.C. Law 1-70, title VI, § 602, 23 DCR 549; Mar. 5, 1981, D.C. Law 3-134, § 3, 27 DCR 4424; June 4, 1982, D.C. Law 4-112, § 4, 29 DCR 1687; June 22, 1983, D.C. Law 5-14, § 1003, 30 DCR 2632; Oct. 1, 1987, D.C. Law 7-26, § 3, 34 DCR 5074; Oct. 18, 1989, D.C. Law 8-38, § 3, 36 DCR 5752; repealed pursuant to § 305 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1605.

1973 Ed., § 43-1605a.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2104.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 305 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2105.01. Nonprofit housing developments — Eligibility for rate reduction. [Repealed].

Repealed.

(June 4, 1982, D.C. Law 4-112, § 5, 29 DCR 1687; repealed pursuant to § 305 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1605.1.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2104.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 305 of D.C. Law

11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2105.02. Nonprofit housing developments — Forgiveness of outstanding charges. [Repealed].

Repealed.

(June 4, 1982, D.C. Law 4-112, § 6, 29 DCR 1687; repealed pursuant to § 305 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1605.2.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2104.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 305 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2105.03. Nonprofit housing developments — Rules. [Repealed].

Repealed.

(June 4, 1982, D.C. Law 4-112, § 7, 29 DCR 1687; repealed pursuant to § 305 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1605.3.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2104.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 305 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2105.04. Nonprofit housing developments — Submission of willful false statement. [Repealed].

Repealed.

(June 4, 1982, D.C. Law 4-112, § 8, 29 DCR 1687; repealed pursuant to § 305 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1605.4.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2104.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 305 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2105.05. Nonprofit housing developments — Definitions. [Repealed].

Repealed.

(June 4, 1982, D.C. Law 4-112, § 2, 29 DCR 1687; June 11, 1992, D.C. Law 9-120, § 3, 39 DCR 3195; Feb. 5, 1994, D.C. Law 10-68, § 35, 40 DCR 6311; repealed pursuant to § 305 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1605.5.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2104.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 305 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2106. Payment of sanitary sewer service charges. [Repealed].

Repealed.

(Oct. 21, 1975, D.C. Law 1-23, title VII, § 701(c), 22 DCR 2115; repealed pursuant to § 304 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1606.

1973 Ed., § 43-1605b.

Emergency legislation. — For temporary amendment of section, see § 4(d) of the Confirmation Emergency Amendment Act of 1999 (D.C. Act 13-25, March 15, 1999, 46 DCR 2971).

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2104.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 304 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2107. Methods of determination of sanitary sewer service charges.

(a) The sanitary sewer service charges established under the authority of this subchapter shall be based on the following:

(1) A billing methodology which takes into account both the water consumption of, and water service to, a property and the amount of impervious surface on a property that either prevents or retards the entry of water into the ground as occurring under natural conditions, or that causes water to run off the surface in greater quantities or at an increased rate of flow, relative to the flow present under natural conditions. For the purposes of this paragraph, the term "surface" shall include rooftops, footprints of patios, driveways, private streets, other paved areas, athletic courts and swimming pools, and any path or walkway that is covered by impervious material.

(2) Repealed.

(3)(A) For any unimproved real property under construction that discharges groundwater into a District-owned sanitary sewer, or combined sewer, or for any real property using water, part of which is from a source or sources other than the District water supply system, the real property owner shall pay a sanitary sewer service charge separate from and in addition to any sanitary sewer service charge levied in paragraphs (1) or (2) of this subsection. For any improved real property that discharges groundwater into a District-owned sanitary or combined sewer, the real property owner shall not be subject to

payment of a separate and additional charge for discharges of groundwater, but shall pay for discharges of cooling water into a District-owned sanitary of combined sewer that are derived from a source or sources other than the District water supply system.

(B)(i) For unimproved real property under construction the separate and additional sanitary sewer service charge shall apply to and be measured by the quantity of water that is derived from the groundwater and is discharged into the District sanitary or combined sewer system.

(ii) For improved real property, the separate and additional sanitary sewer service charge shall apply to and be measured by the quantity of water that is derived from the cooling water and is discharged into the District sanitary or combined sewer system.

(iii) For real property using water from a source or sources other than the District water supply system, such separate and additional charge shall be measured by the quantity of water from the source or sources other than the District water supply system discharged into the District sanitary or combined sewer system from the property.

(C) Unless the Mayor determines that it is not practicable, the owner of the real property shall install and maintain, at a location approved by the Mayor and without cost to the District, any sanitary meter or device necessary to measure the quantity of groundwater, cooling water, or water from other than the District water supply system that is discharged into the District's sanitary sewers.

(D) For purposes of this section, the determination made by the Mayor pursuant to Chapter 8 of Title 47 as to whether property is improved or unimproved shall apply.

(4) Wherever a property upon which a sanitary sewer service charge is imposed uses water from the water supply system of the District for an industrial or commercial purpose in such manner that the water so used is not discharged into the sanitary sewage works of the District, the quantity of water so used and not discharged into the sanitary sewage works of the District may be excluded in determining the sanitary sewer service charge on such property, if such exclusion is previously requested in writing by the owner or occupant thereof. Upon such request, the quantity of water so used and not discharged into the sanitary sewage works of the District shall be measured by a device or devices approved by the Mayor, installed and maintained without cost to the District, and the sanitary sewer service charge to be imposed on such property shall be the amount which would have been charged such property if the amount of water so used and not discharged into the sanitary sewage works of the District had not been included in the amount of water used by such property; provided, that all water from the water supply system of the District used by such property shall be paid for at established rates, whether or not such water is discharged into the sanitary sewage works of the District. Where in the opinion of the Mayor, it is not practicable to install a measuring device to determine continuously the quantity of water used for such industrial or commercial purposes and not discharged into the sanitary sewage works of the District, the Mayor shall determine periodically, in such

manner and by such methods as the Mayor may prescribe, the quantity of water from the water supply system of the District discharged into the sanitary sewage works of the District, and the sanitary sewer service charge shall be based on such estimated quantity of water at the percentage authorized by this paragraph. Any dispute as to such estimated amount shall be decided by the Mayor and such decision shall be final; and in the event the owner or occupant fails to furnish and maintain such measuring devices or to facilitate the periodic determinations by the Mayor as prescribed herein, then the privilege of excluding some portion of the water used from the District water supply system from the charges for sanitary sewer service shall be forfeited and the charges for sanitary sewer service shall be based on the full amount of the water used from the District water supply system.

(b) Notwithstanding the provisions of subsection (a), the Council of the District of Columbia is authorized, in its discretion, from time to time to establish 1 or more sanitary sewer service charges at such amount as the Council, on the basis of a recommendation made by the Mayor, finds it necessary to meet the expense to the District of furnishing sanitary sewer services, including debt retirement.

(c) Any owner or occupant of a property that is assessed an impervious surface fee has a right to an appeal under § 34-2305.

(May 18, 1954, 68 Stat. 106, ch. 218, title II, § 207; Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 502; Jan. 5, 1971, 84 Stat. 1931, Pub. L. 91-650, title I, § 105(b); June 13, 1990, D.C. Law 8-136, § 2(d), 37 DCR 2620; Oct. 1, 2002, D.C. Law 14-190, § 3902, 49 DCR 6968; Mar. 25, 2009, D.C. Law 17-370, § 2, 56 DCR 1350.)

Prior Codifications. — 1981 Ed., § 43-1607.

1973 Ed., § 43-1606.

Effect of amendments. — D.C. Law 14-190 rewrote subsec. (a)(3) which had read as follows: "(a)(3) For any real property that discharges waste water into a District-owned sanitary sewer that derives from groundwater or cooling water, the real property owner shall pay a sanitary sewer service charge separate from any sanitary sewer service charge levied in paragraphs (1) and (2) of this subsection. The separate and additional sanitary sewer service charge shall apply to and be measured by the quantity of water that is derived from the groundwater or cooling water and is discharged into the District sanitary or combined sewer system. Unless the Mayor determines that it is not practicable, the owner of the real property shall install and maintain, at a location approved by the Mayor and without cost to the District, any sanitary meter or device necessary to measure the quantity of groundwater or cooling water discharged into the District's sanitary sewage works. The amount of the sanitary sewer service charge shall be set at the same rate as the rate paid by the owner of a metered building that receives water from the District water supply system."

D.C. Law 17-370, in subsec. (a), rewrote the lead-in language and par. (1) and repealed par. (2); and added subsec. (c).

Emergency legislation. — For temporary (90 day) amendment of section, see § 8 of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

For temporary (90 day) amendment of section, see § 3802 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 8-136. — For legislative history of D.C. Law 8-136, see Historical and Statutory Notes following § 34-2301.

Legislative history of Law 14-190. — Law 14-190, the "Fiscal Year 2003 Budget Support Act of 2002", was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of

Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

Legislative history of Law 17-370. — Law 17-370, the "Water and Sever Authority Equitable Ratemaking Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-935 which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 23, 2009, it was assigned Act No. 17-705 and transmitted to both Houses of Congress for its review. D.C. Law 17-370 became effective on March 25, 2009.

Short title. — Short title of title XXXIX of Law 14-190: Section 3901 of D.C. Law 14-190 provided that title XXXIV of the act may be cited as the Water and Sewer Operations Amendment Act of 2002.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (326) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

In action brought against the District of Columbia to determine whether the city council exceeded its statutory authority in establishing water and sewer rates for fiscal years 1976 and 1977, trial court did not err in concluding that plaintiffs failed to establish a prima facie case and that defendants, who established that there was some reasonable basis for increased sewer and water rates, were entitled to judgment as a matter of law. D.C. Code §§ 43-1520c, 43-1606(b). Apartment & Office Bldg. Asso. of Metropolitan Washington v. District of Columbia, 415 A.2d 797, 1980 D.C. App. LEXIS 302 (1980).

§ 34-2108. Persons obligated to pay sanitary sewer service charge.

(a) The owner or occupant of each building, establishment, or other place in the District connected with any District sewer conducting sanitary sewage shall pay the sewer service charge authorized by this subchapter.

(b) If the sanitary sewer service charge imposed by this subchapter is based on a water charge any part of which is for a period beginning prior to the imposition of the sanitary sewer service charge and ending thereafter, the sanitary sewer service charge shall be prorated, on a monthly basis, on so much of such water charge as shall have accrued subsequent to August 1, 1954.

(c) In computing the charge for sanitary sewer service, if such charge is for a period beginning prior to a change in the established sanitary sewer service charge and ending thereafter, the charge shall be based on the rate in effect at the time the charge is rendered.

(May 18, 1954, 68 Stat. 107, ch. 218, title II, § 208; Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 503; Jan. 5, 1971, 84 Stat. 1931, Pub. L. 91-650, title I, § 105(c).)

Prior Codifications. — 1981 Ed., § 43-1608. 1973 Ed., § 43-1607.

§ 34-2109. Meters and measuring devices; maintenance and repairs.

(a) All meters or other measuring devices installed or required to be used under the provisions of this subchapter shall be under the control of the Mayor of the District of Columbia and the Council of the District of Columbia, who shall promulgate all regulations necessary in its judgment to effectuate the purposes of this subchapter. The owner or occupant of the property upon which any such measuring device is installed shall be responsible for its maintenance and safekeeping, and all repairs thereto shall be made at the owner's cost, whether such repairs are made necessary by ordinary wear and tear or other causes. Bills for such repairs, if made by the District, shall be due and payable when rendered, and the Mayor is authorized to provide for stopping the supply of water to any building or establishment upon the failure to pay such charge for meter repairs.

(b) The Mayor shall impose a one-time charge of 10% for any sanitary meter service charge that remains unpaid for more than 30 days and a penalty of 1% per month compounded monthly for any sanitary meter repair service that remains unpaid for more than 60 days from the date the bill is rendered.

(c) In accordance with § 34-2407.02, the Mayor shall impose and enforce a continuing lien upon land and land improvements that are furnished sanitary meter services if any charges remain unpaid for more than 60 days from the date the bill for services is rendered.

(d) The Mayor, with prior written notice to the owner of the date and time of entry, and consistent with constitutional guidelines, may enter any building, establishment, or other premises to inspect, install, replace, read, or repair any sanitary meter required to be installed pursuant to the Public Works Act, or to investigate whether water derived from groundwater or cooling water is being discharged from the real property into a sanitary or combined sewer system. If the Mayor is unable to gain entry to the real property after 2 attempts, the Mayor shall notify the owner or occupant to contact the Department within 3 business days after notice is mailed to the owner. If the owner or occupant fails to contact the Department, it shall be presumed that the owner refuses to permit entry to the property and the Mayor may impose a penalty of $100 and shut off the water supply to the real property. Upon the payment of the penalty of issuance of a final decision where the owner files a request for administrative review, the Mayor may restore the water supply.

(May 18, 1954, 68 Stat. 107, ch. 218, title II, § 209; June 13, 1990, D.C. Law 8-136, § 2(e), 37 DCR 2620.)

Section references. — This section is referred to in §§ 47-1303, 47-1304, 47-1306, 47-1307, and 47-1312.

Prior Codifications. — 1981 Ed., § 43-1609. 1973 Ed., § 43-1608.

Legislative history of Law 8-136. — For legislative history of D.C. Law 8-136, see Historical and Statutory Notes following § 34-2301.

References in text. — The "Public Works Act," referred to in the first sentence of (d), is 68 Stat. 104, ch. 218.

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 34-2107.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(327) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2110. Additional charge for overdue bills; enforcement of lien.

(a) The Council of the District of Columbia is hereby authorized, in order to encourage the prompt payment of the sanitary sewer service charge imposed by this subchapter, to impose an additional charge of 10% for any sanitary sewer service charge remaining unpaid for more than 30 days, impose a penalty at the rate of 1% per month compounded monthly for any sanitary sewer service charge that remains unpaid for more than 60 days, and the Mayor of the District of Columbia is authorized to shut off the water of premises for which such charge is not paid within 30 days, and to have and enforce a continuing lien for such charge upon the land and any improvements thereon furnished such sanitary sewer service, in the same manner and to the same extent as if §§ 34-2407.01, 34-2407.02, 34-2407.03, and 34-2413.10 [repealed] were set forth in this subchapter, and such sections shall be deemed to be applicable in every particular to the sanitary sewer service charge imposed by this subchapter; provided, that whenever said lien is enforced by the sale of property against which it has been assessed, so much of the proceeds of such sale as represents said unpaid sanitary sewer service charges shall be credited to the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975.

(b) The Mayor may defer or forgive, in whole or in part, any sanitary sewer service charges due the District of Columbia with respect to any qualified real property approved pursuant to § 6-1503.

(May 18, 1954, 68 Stat. 107, ch. 218, title II, § 210; Jan. 22, 1976, D.C. Law 1-42, § 3(f)(5), 22 DCR 6315; Oct. 20, 1988, D.C. Law 7-177, § 9(b), 35 DCR 6158; June 13, 1990, D.C. Law 8-136, § 2(f), 37 DCR 2620; Nov. 25, 1993, D.C. Law 10-65, § 501(b), 40 DCR 7351.)

Section references. — This section is referred to in §§ 6-1503, 34-2202.19, 42-1052, 47-1303, 47-1304, 47-1306, 47-1307, and 47-1312.

Prior Codifications. — 1981 Ed., § 43-1610.

1973 Ed., § 43-1609.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of D.C. Water and Sewer Operations Temporary Amendment Act of 1993(D.C. Law 10-3, May 18, 1993, law notification 42 DCR 3404).

Legislative history of Law 1-42. — For

legislative history of D.C. Law 1-42, see Historical and Statutory Notes following § 34-2401.13.

Legislative history of Law 7-177. — For legislative history of D.C. Law 7-177, see Historical and Statutory Notes following § 34-2407.02.

Legislative history of Law 8-136. — For legislative history of D.C. Law 8-136, see Historical and Statutory Notes following § 34-2301.

Legislative history of Law 10-65. — Law 10-65, the "Omnibus Spending Reduction Act of 1993," was introduced in Council and assigned Bill No. 10-323, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on July 21, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 6, 1993, it was assigned Act No. 10-120 and transmitted to both Houses of Congress for its review. D.C. Law 10-65 became effective on November 25, 1993.

References in text. — The Revenue Funds Availability Act of 1975, referred to in subsection (a) of this section, is the Act of January 22, 1976, D.C. Law 1-42.

Editor's notes. — Mayor authorized to issue rules: Section 13 of D.C. Law 7-177 provided that the Mayor shall issue rules to implement the provisions of the act.

§ 34-2111. Sanitary sewer service charges for churches and institutions.

The sanitary sewer service charges applicable to such churches and institutions as may under existing law be furnished water without charge by the Mayor of the District of Columbia shall be predicated only on the quantity of water used in excess of the amount fixed by the Mayor in each case as to which no water charge is made.

(May 18, 1954, 68 Stat. 108, ch. 218, title II, § 211.)

Prior Codifications. — 1981 Ed., § 43-1611.

1973 Ed., § 43-1610.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2112. Sanitary sewer service charges for United States government.

(a) The sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, and such charges shall be predicated on the value of water and water services received by such facilities of the government of the United States or any department, independent establishment, or agency thereof from the District water supply system. Payment of the said sanitary sewer service charge shall be made as provided in subsection (b) of this section.

(b)(1) Beginning in the second quarter of fiscal year 1990, the government of the District of Columbia shall receive payment for sanitary sewer services from

funds appropriated or otherwise available to the Federal departments, independent establishments, or agencies. In accordance with the provisions of paragraphs (2) and (3) of this subsection, one-fourth (25 percent) of the annual estimate prepared by the District government shall be paid, not later than the second day of each fiscal quarter, to the District government by the Secretary of the Treasury from funds deposited by said departments, establishments, or agencies in a United States Treasury account entitled "Federal Payment for Water and Sewer Services". In the absence of sufficient funds in said account, payment shall be made by the Secretary of the Treasury from funds available to the United States Treasury and shall be reimbursed promptly to the United States Treasury by the respective user agencies. Payments shall be made to the District government by the Secretary of the Treasury without further justification, and shall be equal to one-fourth (25 percent) of the annual estimate prepared by the District government pursuant to paragraph (2) of this subsection.

(2) By April 15 of each calendar year the District shall provide the Office of Management and Budget, the Secretary of the Treasury, and the head of each of the respective Federal departments, independent establishments, and agencies, for inclusion in the President's budget of the respective Federal departments, independent establishments, or agencies, an estimate of the cost of service for the fiscal year commencing October 1st of the following calendar year. The estimate shall provide the total estimated annual cost of such service and an itemized estimate of such costs by Federal department, independent establishment, or agency. The District's estimates on a yearly basis shall reflect such adjustments as are necessary to (A) account for actual usage variances from the estimated amounts for the fiscal year ending on September 30th of the calendar year preceding April 15th, and (B) reflect changes in rates charged for water and sewer services resulting from public laws or rate covenants pursuant to water and sewer revenue bond sales.

(3) Each Federal department, independent establishment, or agency receiving sanitary sewer services in buildings, establishments, or other places shall pay from funds specifically appropriated or otherwise available to it, quarterly and on the first day of each such fiscal quarter, to an account in the United States Treasury entitled "Federal Payment for Water and Sewer Services" an amount equal to one-fourth (25 percent) of the annual estimate for said services as provided for in paragraph (2) of this subsection.

(4) The amount or time period for late payment of charges for sanitary sewer services involving a building, establishment, or other place owned by the Government of the United States imposed by the District of Columbia shall not be different from those imposed by the District of Columbia on its most favored customer.

(5) Repealed.

(c) Nothing in this section may be construed to require the District of Columbia to seek payment for sanitary sewer services directly from any Federal entity which is under the jurisdiction of a department, independent establishment, or agency which is required to make a payment for such services under this section, or to allocate any amounts charged for such

services among the entities which are under the jurisdiction of any such department, independent establishment, or agency. Each Federal department, independent establishment, and agency receiving sanitary sewer services from the District of Columbia shall be responsible for allocating billings for such services among entities under the jurisdiction of the department, establishment, or agency, and shall be responsible for collecting amounts from such entities for any payments made to the District of Columbia under this section.

(May 18, 1954, 68 Stat. 108, ch. 218, title II, § 212; Oct. 6, 1977, 91 Stat. 1093, Pub. L. 95-122, § 1(2); Nov. 21, 1989, 103 Stat. 1280, Pub. L. 101-168, § 133(c); Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1(a)(4), H.R. 5666, Div. A., Ch. 4, § 401(b); Dec. 21, 2001, 115 Stat. 942, 943, Pub. L. 107-96, par. (52)(a)(1), (c)(1); Oct. 18, 2004, 118 Stat. 1348, Pub. L. 108-335, § 337(b).)

Section references. — This section is referred to in § 47-131.

Prior Codifications. — 1981 Ed., § 43-1612.

1973 Ed., § 43-1611.

Effect of amendments. — Pub. L. 107-96, in subsec. (b), par. (2), inserted "the Secretary of the Treasury, and the head of each of the respective Federal departments, independent establishments, and agencies,"; and added subsec. (c) relating to payment for sanitary sewer services.

Pub. L. 108-335, in subsec. (b), repealed par. (5) which had read as follows: "(5) Not later than the 15th day of the month following each quarter (beginning with the first quarter of fiscal year 2001), the inspector general of each Federal department, establishment, or agency receiving sanitary sewer services from the District of Columbia shall submit a report to the Committees on Appropriations of the House of Representatives and Senate analyzing the promptness of payment with respect to the services furnished to such department, establishment, or agency."

Effective date. — Pub. L. 107-96, 115 Stat. 944, the District of Columbia Appropriations Act, 2002, provided in part:

"This section and the amendments made by this section shall apply with respect to fiscal year 2002 and each succeeding fiscal year."

Section 337(c) of Pub. L. 108-335 provided: "(c) The amendments made by this section shall apply with respect to quarters occurring during fiscal year 2005 and each succeeding fiscal year."

Editor's notes. — Apportionment of appropriations: Public Law 102-382, 106 Stat. 1429, the District of Columbia Appropriations Act, 1993, provided for the Water and Sewer Enterprise Fund, $251,630,000, of which $39,602,000 shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects. Restrictions on use of Federal payment: Section 134 of § 1(c) of Pub. L. 100-202, the District of Columbia Appropriations Act, 1988, provided that none of the funds available to the District of Columbia government shall be used for any purpose involved in billing individual agencies or establishments for water and water services and sanitary sewer services traditionally funded under the account "Federal Payment for Water and Sewer Services" unless and until existing statutes (sections 106 and 212 of the District of Columbia Public Works Act of 1954, as amended, Public Law 364, approved May 18, 1954) are amended to specifically provide for such billing. Apportionment of appropriations: For construction projects, $45,908,000, as authorized by § 43-1512 et seq.: Provided, That the requirements and restrictions that are applicable to general fund capital improvement projects and set forth in this Act under the Capital Outlay appropriation title shall apply to projects approved under this appropriation title: Provided further, That $22,705,000 in water and sewer enterprise fund operating revenues shall be available for pay-as-you-go capital projects. Section 128 of Pub. L. 103-334, 108 Stat. 2576, the District of Columbia Appropriations Act, 1995, amended section 133(e) of the District of Columbia Appropriations Act, 1990, by striking "shall take effect" and all that follows and inserting "shall apply with respect to water and sanitary sewer services furnished on or after January 1, 1990." Thus, as of September 30, 1994, section 133(e) of the District of Columbia Appropriations Act, 1990, has read as follows: "The amendments made by this section shall apply with respect to water and sanitary sewer services furnished on or after January 1, 1990." Section 133(e) controls the effectiveness of this section. Section 401(c) of Chapter 4 of Division A of H.R. 5666, as enacted by reference by section 1(a)(4) of Pub. L. 106-554, stated that "The amendments made by this section shall take effect as if included in the enactment of section 133 of the District of Columbia Appropriations Act, 1990."

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2113. Use of funds from General Fund for certain sewers.

Nothing herein contained shall prohibit the use of funds deposited to the credit of the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975 [D.C. Law 1-42] from being used for the construction, expansion, relocation, replacement, or renovation of any sewer in the combined sewer system of the District.

(May 18, 1954, 68 Stat. 109, ch. 218, title II, § 215; Jan. 22, 1976, D.C. Law 1-42, §§ 3(f)(6), 8, 22 DCR 6315, 6318.)

Prior Codifications. — 1981 Ed., § 43-1613.

1973 Ed., § 43-1614.

Legislative history of Law 1-42. — For legislative history of D.C. Law 1-42, see Historical and Statutory Notes following § 34-2401.03.

References in text. — The Revenue Funds Availability Act of 1975, referred to in this section, is the Act of January 22, 1976, D.C. Law 1-42.

§ 34-2114. Rules and regulations.

The Council of the District of Columbia is authorized to make rules and regulations to carry out the provisions of this subchapter.

(May 18, 1954, 68 Stat. 120, ch. 218, title XVII, § 1701.)

Prior Codifications. — 1981 Ed., § 43-1614.

1973 Ed., § 43-1618.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(329) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter II. Dulles International Airport Sanitary Sewer.

§ 34-2131. Commissioner authorized to develop plan for interceptor and sewer line.

The Mayor of the District of Columbia (or his designated agents), hereinafter called the Mayor, is hereby authorized to develop a plan for a sanitary interceptor and trunk sewer line to extend from Dulles International Airport to the District of Columbia system, hereinafter called the Potomac interceptor, which shall be of sufficient capacity to provide service for such airport and for the expected community growth and development in the adjacent areas in the States of Maryland and Virginia. Such plan shall be developed in consultation with the National Capital Planning Commission and the Washington Metropolitan Council of Governments.

(June 12, 1960, 74 Stat. 210, Pub. L. 86-515, § 1.)

Section references. — This section is referred to in § 34-2132.

Prior Codifications. — 1981 Ed., § 43-1621.

1973 Ed., § 43-1620.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2132. Potomac interceptor — Plans, construction, operation, and maintenance; charges for use.

(a) Upon completion of the plan authorized by § 34-2131, the Mayor is authorized to provide for acquisition of rights-of-way, development of the detailed plans and specifications, and construction of the Potomac interceptor. When such interceptor is completed, it shall be operated and maintained by the Mayor as a part of a regional sanitary sewer system in cooperation with the proper authorities of the state and local jurisdictions concerned, under such regulations as may be prescribed by the Council of the District of Columbia.

(b) The Mayor is authorized to establish, by agreements with the appropriate agencies of the United States and with the proper authorities of the States and local jurisdictions concerned, charges for the use of the Potomac interceptor, which shall be based upon the costs of operation, maintenance, and amortization of the cost of all planning and construction (including acquisition of rights-of-way) of such interceptor, but which shall exclude such amount as may be appropriated pursuant to § 34-2133.

(c) The Mayor shall also charge all users of the Potomac interceptor, including any agency of the United States for carrying, treating, and disposing

of sewage in the sewerage system of and within the District of Columbia consistently with the provisions of §§ 2-207.01 and 2-207.02.

(June 12, 1960, 74 Stat. 211, Pub. L. 86-515, § 2; Sept. 11, 1967, 81 Stat. 224, Pub. L. 90-84, § 1; Dec. 15, 1971, 85 Stat. 654, Pub. L. 92-196, title V, § 502; Jan. 22, 1976, D.C. Law 1-42, § 4(a), (b), 22 DCR 6316.)

Prior Codifications. — 1981 Ed., § 43-1622.

1973 Ed., § 43-1621.

Legislative history of Law 1-42. — For legislative history of D.C. Law 1-42, see Historical and Statutory Notes following § 34-2401.13.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(330) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2133. Potomac Interceptor — Appropriations.

For the purposes of carrying out the provisions of this subchapter, there is authorized to be appropriated, without fiscal year limitation, the sum of $3,000,000, as the federal contribution toward the cost of planning, acquiring rights-of-way for, and constructing the Potomac interceptor.

(June 12, 1960, 74 Stat. 210, Pub. L. 86-515, § 3; Jan. 22, 1976, D.C. Law 1-42, § 4(c), 22 DCR 6316.)

Section references. — This section is referred to in § 34-2132.

Prior Codifications. — 1981 Ed., § 43-1623.

1973 Ed., § 43-1622.

Legislative history of Law 1-42. — For legislative history of D.C. Law 1-42, see Historical and Statutory Notes following § 34-2401.13.

§ 34-2134. Potomac Interceptor — Acquisition of land in Maryland or Virginia; transfer of land from department or agency of United States.

(a) The Mayor is authorized to acquire by purchase, condemnation, donation, or otherwise, any land or any interest in land located in Maryland or Virginia needed for construction and operation of the Potomac interceptor. Title to any such land or interest in land shall be taken in the name of the United States but shall be under the jurisdiction and control of the Mayor. For the purpose of acquiring any such land or any interest in land, the Mayor shall be deemed to be an officer of the government within the meaning and for the purposes of § 257 [revised; see now 40 U.S.C. § 3113] of Title 40, United States Code. The provisions of §§ 258a-258e and 258f [revised; see now 40 U.S.C. §§ 3114 to 3118] of Title 40, United States Code, shall be applicable to

any condemnation proceedings instituted pursuant to authority of this subchapter.

(b) When any land under the jurisdiction of any department or agency of the United States may be needed for the construction or operation of the Potomac interceptor, the appropriate officer of such department or agency is authorized, upon request of the Mayor, to transfer to the Mayor jurisdiction over so much of such land, or of such interests therein, as the Mayor shall request.

(June 12, 1960, 74 Stat. 211, Pub. L. 86-515, § 5.)

Prior Codifications. — 1981 Ed., § 43-1624.

1973 Ed., § 43-1624.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CHAPTER 21A. LEAD SERVICE LINE REPLACEMENT ASSISTANCE.

Sec.
34-2151. Lead Service Line Priority Replacement Assistance Fund.
34-2152. Funding.
34-2153. Eligibility criteria.
34-2154. Administering of grants.
34-2155. Rules and procedures.
34-2156. Non-liability of the District and the Water and Sewer Authority.
34-2157. [Repealed].

§ 34-2151. Lead Service Line Priority Replacement Assistance Fund.

(a) There is established within the General Fund of the District of Columbia a nonlapsing Lead Service Line Priority Replacement Assistance Fund ("Fund") to be administered by the Mayor, in consultation with the District of Columbia Water and Sewer Authority ("WASA").

(b) The purpose of the Fund shall be to provide grants to eligible District homeowners up to $2,500 to assist them in the replacement of the portion of their lead service line that is located on their private property.

(c) Payments to eligible homeowners are subject to appropriation and the availability of funds. This chapter does not establish a right to funds on the part of any person.

(Dec. 7, 2004, D.C. Law 15-205, § 6012, 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 6012 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 6012 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — Law 15-205, the "Fiscal Year 2005 Budget Support Act of 2004", was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Short title. — Short title of subtitle B of title VI of Law 15-205: Section 6011 of D.C. Law 15-205 provided that subtitle B of title VI of the act may be cited as the Lead Service Line Priority Replacement Assistance Act of 2004.

§ 34-2152. Funding.

(a) The Fund shall be comprised of:

(1) General revenue funds appropriated by a line item in the budget submitted pursuant to § 1-204.46 and authorized by Congress in an appropriations act for the purposes of the Fund;

(2) Grants from any source to the Fund or to the District of Columbia for the purposes of the Fund;

(3) Capital funds appropriated for the purposes of the Fund; and

(4) Interest earned from the deposit or investment of monies of the Fund.

(b) The monies shall be deposited into the Fund without regard to fiscal year limitation pursuant to an act of Congress, and shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other

time, but shall be continually available for the purpose of the Fund, subject to authorization by Congress.

(c) The Mayor shall include in the fiscal year 2006 budget estimates of the District an amount as may be necessary for capitalization of the Fund.

(Dec. 7, 2004, D.C. Law 15-205, § 6013, 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 6013 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 6013 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 34-2151.

§ 34-2153. Eligibility criteria.

(a) To be eligible for an assistance grant from the Fund, a household must:

(1) Have an aggregate income of 60% or less than the area median income for a household of like size in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development; and

(2) Have a known lead service line.

(b) Grants shall be awarded, to the extent reasonably possible, according to the following priority:

(1) Households with a tap water test that shows a lead level at or above 15 parts per billion and that include:

(A) A child under the age of 6 years;

(B) A pregnant woman; or

(C) A woman who is nursing;

(2) Households with a tap water test that shows a lead level below 15 parts per billion and which include:

(A) A child under the age of 6 years;

(B) A pregnant woman; or

(C) A woman who is nursing; and

(3) To all other eligible households.

(c) Grants under this section shall be awarded as follows:

(1) The District shall pay 100% of the replacement costs of lead service lines, up to $2,000, for eligible households with incomes of 20% or less of the area median income for a household of like size;

(2) The District shall pay 80% of the replacement costs of lead service lines, up to $2,000, for eligible households with incomes of 21% to 30% of the area median income for a household of like size;

(3) The District shall pay 60% of the replacement costs of lead service lines, up to $2,000, for eligible households with incomes of 31% to 40% of the area median income for a household of like size;

(4) The District shall pay 50% of the replacement costs of lead service lines, up to $2,000, for eligible households with incomes of 41% to 60% of the area median income for a household of like size.

(d) If funds are not sufficient to pay for the replacement costs of lead service lines for all eligible households under this section, priority shall be given to

providing grants to the eligible households with the lowest total income in the priority established under subsection (b) of this section.

(Dec. 7, 2004, D.C. Law 15-205, § 6014, 51 DCR 8441; Mar. 2, 2007, D.C. Law 16-191, §§ 23, 57, 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191, in subsec. (a)(2), validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) addition, see § 6014 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 6014 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 34-2151.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 34-209.

§ 34-2154. Administering of grants.

WASA shall administer the grants under this chapter. A household requesting a grant for assistance in replacing a lead service line on private property shall apply to WASA for the grant, and WASA shall determine whether the household meets the eligibility criteria of § 34-2153(a). Upon determination by WASA that a household is eligible for a grant under this chapter, WASA or a subcontractor of WASA shall replace the service line on private property at cost and shall credit the household for the amount of the grant for which it is eligible against the costs of replacement.

(Dec. 7, 2004, D.C. Law 15-205, § 6015, 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 6015 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 6015 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 34-2151.

§ 34-2155. Rules and procedures.

The Mayor, in consultation with WASA, is authorized to promulgate rules and to establish procedures to implement this chapter.

(Dec. 7, 2004, D.C. Law 15-205, § 6016, 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 6016 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 6016 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 34-2151.

§ 34-2156. Non-liability of the District and the Water and Sewer Authority.

The replacement of a lead service line that is located on private property and that is funded, in whole or in part, pursuant to this chapter shall not be the responsibility of the District or WASA. Neither the District nor WASA shall be

liable for any negligent acts or acts of omission associated with the replacement of lead service lines, and the District shall incur no liability associated with the replacement of the lines.

(Dec. 7, 2004, D.C. Law 15-205, § 6017, 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 6017 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 6017 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 34-2151.

§ 34-2157. Applicability. [Repealed].

Repealed.

(Dec. 7, 2004, D.C. Law 15-205, § 6018, 51 DCR 8441; Aug. 16, 2008, D.C. Law 17-219, § 7058, 55 DCR 7598.)

Emergency legislation. — For temporary (90 day) addition, see § 6018 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 6018 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 4-204.61.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 34-808.01.

CHAPTER 22. WATER AND SEWER AUTHORITY.

Subchapter I. Declaration of Policy

Sec.
34-2201.01. Findings and declarations.

Subchapter II. General Provisions

34-2202.01. Definitions.
34-2202.02. Establishment of the District of Columbia Water and Sewer Authority; general purpose of the Authority.
34-2202.03. General powers of Authority.
34-2202.04. Establishment of a board of directors.
34-2202.05. Duties of the Board.
34-2202.06. General Manager; employment and duties.
34-2202.06a to 34-2202.06c. [Repealed].
34-2202.07. Water and Sewer Enterprise Fund; assets of the Water and Sewer Utility Administration of the Department of Public Works; transfer of funds and assets; pledge of revenues.
34-2202.08. Delegation of Council authority to issue bonds.
34-2202.09. Power of the Authority to issue revenue bonds and notes or other obligations.
34-2202.10. Delegation of Council authority to issue bonds.
34-2202.11. Delegation of Council authority to issue bonds.
34-2202.12. [Repealed].
34-2202.13. District repayment option.
34-2202.13a. Defeasance of bonds.
34-2202.14. Procurement system inapplicable.
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34-2202.16. Charges and fees and rate setting.
34-2202.16a. Low-impact design incentive program and fee discounts.
34-2202.17. Transition provisions.
34-2202.18. Existing agreements.
34-2202.19. Transfer of function and redelegation of authority.
34-2202.20. No inurement to private persons; exemption from District taxation.

Subchapter III. Enterprise Fund Operation and Maintenance Account

34-2202.41. Operation and Maintenance Account.

Subchapter I. Declaration of Policy.

§ 34-2201.01. Findings and declarations.

The Council of the District of Columbia hereby finds and declares that:

(1) Providing water distribution services and sewage collection, treatment, and disposal to the District and portions of the Metropolitan Washington area is essential to ensure the health and safety of the citizens of the District.

(2) Commercial and industrial development in the District requires an adequate water and sewer utility system capable of meeting the needs of the District and the District's statutory obligation to provide wastewater treatment services to suburban jurisdictions.

(3) The financing requirements for water distribution and sewage collection, treatment, and disposal systems, including the ability to fund capital programs without undue reliance on the general obligation credit of the District, are substantial and require financial resources independent of other District funds.

(4) Creation of an independent authority with secure funding separated from the District's General Fund to oversee water and sewer operations for the District and surrounding jurisdictions will enhance the financial viability of water distribution and sewage collection, treatment, and disposal systems in the District and enhance the District's ability to meet its statutory obligation to provide sanitary sewer services to the surrounding jurisdictions.

(5) Creation of a water and sewer authority will enhance opportunities for economic development in the District and the Metropolitan Washington area.

(6) Professional and productive management and system-wide planning of water distribution and sewage collection, treatment, and disposal systems necessitate the creation of a water and sewer authority.

(7) It is in the best interest of the District, its citizens, and the surrounding jurisdictions that the Council establish an independent water and sewer authority to achieve the following goals and objectives:

(A) To facilitate the efficient and economical operation of water distribution and sewage collection, disposal, and treatment systems in the District and surrounding jurisdictions;

(B) To expedite the repair, replacement, rehabilitation, modernization, and extension of existing water distribution and sewage collection, treatment, and disposal systems including the financing, on a self-sustaining basis, of capital and operating expenses relating thereto;

(C) To enhance and protect water resources in the District and the Metropolitan Washington area by reducing pollution to adjacent streams; and

(D) To facilitate the provision of regional sanitary sewer services to the suburban jurisdictions that receive wastewater treatment services from the District's Blue Plains Wastewater Treatment Plant.

(8) In order to achieve maximum utilization of resources and efficiency of operations, the water and sewer authority should operate as a public enterprise.

(Apr. 18, 1996, D.C. Law 11-111, § 101, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(a), 43 DCR 4265.)

Section references. — This section is referred to in § 2-303.20.

Prior Codifications. — 1981 Ed., § 43-1661.

Emergency legislation. — For temporary amendment of section, see § 2(a) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(a) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), see § 2(a) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and see § 2(a) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Legislative history of Law 11-111. — Law 11-111, the "Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996," was introduced in Council and assigned Bill No. 11-102, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 7, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 31, 1996, it was assigned Act No. 11-201 and transmitted to both Houses of Congress for its review. D.C. Law 11-111 became effective on April 18, 1996.

Legislative history of Law 11-184. — Law 11-184, the "Highway Trust Fund Establishment Act and the Water and Sewer Authority Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-513, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-337 and transmitted to both Houses of Congress for its review. D.C. Law 11-184 became effective on April 9, 1997.

Subchapter II. General Provisions.

§ 34-2202.01. Definitions.

For the purposes of this chapter, the term:

(1) "Authority" means the District of Columbia Water and Sewer Authority established pursuant to § 34-2202.02(a).

(2) "Cost" means any and all reasonable expenses related to the purposes or activities of the Authority including expenses for operation and maintenance activities; expenses for preconstruction and construction, acquisition, alteration, improvement, enlargement of furnishing, fixturing and equipping, reconstruction and rehabilitation of the water distribution and sewage collection, treatment, and disposal systems of the District, including without limitation, the purchase or lease expense for all lands, structures, real or personal property, rights, rights-of-way, roads, franchises, easements, and interest acquired or used for, or in connection with the Authority; the expenses of demolishing or removing buildings or structures on land acquired by the Authority, including the expenses incurred for acquiring any lands to which the buildings may be moved or located; the expenses incurred for all utility lines, structures or equipment charges, and interest on financial obligations incurred for a period as the Authority may reasonably determine to be necessary for the effective functioning of the water distribution and sewage collection, treatment, and disposal systems; provisions for reserves for principal and interest for extensions, operating and contingency reserves, enlargements, additions, and improvements; expenses incurred for architectural engineering, energy efficiency technology, design and consulting, financial and legal services, letters of credit, bond insurance, debt service or debt service reserve insurance, surety bonds or similar credit enhancement instruments, plans, specification studies, surveys, and estimates of expenses and of revenues; expenses necessary or incident to determining the feasibility of improvements to the water distribution and sewage collection, treatment, and disposal systems, the financing of such improvements, including a proper allowance for contingencies, and the provision of reasonable initial working capital for operating the improved systems and expenses for obtaining potable water for distribution.

(3) "Dedicated revenues" means revenues collected pursuant to water and sewer rates, fees, and charges imposed by the Authority.

(4) "Joint-use sewerage facilities" means the following:

(A) Little Falls Trunk Sewer;

(B) Upper Potomac Interceptor Sewer;

(C) Upper Potomac Interceptor Relief Sewer;

(D) Rock Creek Main Interceptor Sewer;

(E) Rock Creek Main Interceptor Relief Sewer;

(F) Potomac River Interceptor Sewer;

(G) Potomac River Sewage Pumping Station;

(H) Potomac River Force Mains;

(I) Watts Branch Trunk Sewer;

(J) Anacostia Force Main (Project 89 Sewer);

(K) Anacostia Force Main & Gravity Sewer;

(L) Outfall Sewers (Renamed Potomac River Trunk Sewers);

(M) Outfall Relief Sewers (Renamed Potomac River Trunk Relief Sewers);

(N) Upper Oxon Run Trunk Sewer;

(O) Upper Oxon Run Trunk Relief Sewer;

(P) Lower Oxon Run Trunk Sewer;

(Q) Lower Oxon Run Trunk Relief Sewer;

(R) Blue Plains Wastewater Treatment Plant (Blue Plains); and

(S) Potomac Interceptor Sewer.

(5) "Other participating jurisdictions" means Montgomery County, Maryland, Prince George's County, Maryland, and Fairfax County, Virginia.

(6) "Revenue bond" means any revenue bond, note, or other obligation (including refunding bonds, notes, or other obligations) used to borrow money to finance, assist in financing, or to refinance undertakings authorized by § 1-204.90, and this chapter.

(7) "Service sewer" means a sewer with which connection may be directly made for the purpose of providing sewage facilities to abutting property.

(8) "Sewage collection, treatment, and disposal systems" means all the facilities used, or to be used, for the collection, transmission, treatment, and disposal of sanitary sewage and stormwater flow, including the following:

(A) Sewers carrying the following:

(i) Sewage mixed with storm and surface water;

(ii) Sewage discharged from sanitary conveniences;

(iii) Commercial or industrial wastes;

(iv) Water distributed after use;

(v) Stormwater run-off; and

(vi) Both sanitary sewage run-off and stormwater run-off;

(B) Sanitary, stormwater, and combined pumping stations;

(C) Wastewater treatment plants, including the Blue Plains Wastewater Treatment Plant; and

(D) Facilities for the processing, management, and disposal of biosolids.

(9) "Sewer" means a pipe or conduit carrying sewage or stormwater flow.

(9A) Repealed.

(9B) Repealed.

(10) "Water and sewer rates" means the fees imposed by the Authority on its retail customers for water, sewer, and stormwater services pursuant to this chapter.

(11) "Water distribution system" means all the facilities used, or to be used, for the distribution of potable water situated within the public space of the District.

(Apr. 18, 1996, D.C. Law 11-111, § 201, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(b), 43 DCR 4265; June 9, 2001, D.C. Law 13-311, § 2(a), 48 DCR 3512; Mar. 25, 2009, D.C. Law 17-371, § 3(a), 56 DCR 1353.)

Prior Codifications. — 1981 Ed., § 43-1671.

Effect of amendments. — D.C. Law 13-311 added pars. (9A) and (9B).

D.C. Law 17-371 repealed pars. (9A) and (9B).

Emergency legislation. — For temporary amendment of section, see § 2(b) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(b) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(b) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(b) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 11-184. — For legislative history of D.C. Law 11-184, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 13-311. — Law 13-311, the "Storm Water Permit Compliance Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-813, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 22, 2001, it was assigned Act No. 13-311 and transmitted to both Houses of Congress for its review. D.C. Law 13-580 became effective on June 13, 2001.

Legislative history of Law 17-371. — Law 17-371, the "Comprehensive Stormwater Management Enhancement Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-980 which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 23, 2009, it was assigned Act No. 17-706 and transmitted to both Houses of Congress for its review. D.C. Law 17-371 became effective on March 25, 2009.

§ 34-2202.02. Establishment of the District of Columbia Water and Sewer Authority; general purpose of the Authority.

(a) There is established, as an independent authority of the District government, the District of Columbia Water and Sewer Authority. The Authority shall be a corporate body, created to effectuate certain public purposes, that has a separate legal existence within the District government.

(b) Except as provided in §§ 34-2202.14 and 34-2202.15, the Authority shall be subject to all laws applicable to offices, agencies, departments, and instrumentalities of the District government, and shall be subject to the provisions of Chapter 2 of Title 1, including provisions granting oversight responsibilities to the Chief Financial Officer as defined in § 1-204.25(b).

(c) Notwithstanding any other provisions of this chapter, the general purpose of the Authority is to plan, design, construct, operate, maintain, regulate, finance, repair, modernize, and improve water distribution and sewage collection, treatment, and disposal systems and services, and to encourage conservation.

(Apr. 18, 1996, D.C. Law 11-111, § 202, 43 DCR 548; Sept. 18, 2007, D.C. Law 17-20, § 6062(a), 54 DCR 7052.)

Section references. — This section is referred to in §§ 1-204.53, 1-204.90, 2-223.01, 34-2202.01, and 42-3251.

Prior Codifications. — 1981 Ed., § 43-1672.

Effect of amendments. — D.C. Law 17-20, in subsec. (b), inserted ",including provisions granting oversight responsibilities to the Chief Financial Officer as defined in § 1-204.25(b)".

Emergency legislation. — For temporary

(90 day) amendment of section, see § 6062(a) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 34-1514.

Short title. — Short title: Section 6061 of D.C. Law 17-20 provided that subtitle G of title VI of the act may be cited as the "Water and Sewer Authority Clarification of Authorities and Report Requirement Amendment Act of 2007".

Mayor's Orders. — Establishment of the Executive Transition Team for the District of Columbia Water and Sewer Authority: See Mayor's Order 96-43, March 27, 1996 (43 DCR 1807).

§ 34-2202.03. General powers of Authority.

In addition to the delegation of powers contained in § 34-2202.08, the Authority shall possess the following powers:

(1) To sue and be sued;

(2) To have a seal and alter the seal at its pleasure;

(3) To make, adopt, and alter by-laws, rules, and regulations for the administration and regulation of its business and affairs;

(4) To elect, appoint, or hire officers, employees, or other agents of the Authority, except Board members, including experts and fiscal agents, define their duties, and fix their compensation;

(5) To acquire, by purchase, gift, lease, or otherwise, and to own, hold, improve, use, sell, convey, exchange, transfer, lease, sublease, and dispose of real and personal property of every kind and character, or any interest therein, for its corporate purposes;

(6) To issue regulations and establish policies for contracting and procurement which are consistent with principles of competitive procurement;

(7) To accept loans, gifts, or grants of money, materials, or property of any kind from the United States, or any agency or instrumentality thereof, or the District, upon terms and conditions as may be imposed upon the Authority to the extent that the terms and conditions are not inconsistent with the limitations and laws of the District and are otherwise within the powers of the Authority;

(8) To borrow money for any of its corporate purposes and to provide for the payment of the same, as may be permitted under the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; § 1-201.01 et seq.), and the laws of the District;

(9) To issue revenue bonds pursuant to § 34-2202.09;

(10) To enter into contracts with the District, the United States, Maryland, or Virginia, or their political subdivisions, other public entities, or private entities for goods and services as needed to achieve its purposes; provided, that prior to the Authority contracting out to a private entity, a service or activity performed by employees of the Authority, through established standards developed by rules and regulations, the Authority shall establish that the contracting out will achieve increased efficiencies and cost savings to the Authority; provided further, that any contractor who is awarded a contract that displaces any District government employee of the Authority shall offer to any displaced employee a right-of-first-refusal to employment by the contrac-

tor, in a comparable available position for which the employee is qualified, for a least a 6-month period during which time the employee shall not be discharged without cause. If the employee's performance during the 6-month transition employment period is satisfactory, the new contractor shall offer the employee continued employment under the terms and conditions established by the new contractor. Any District government employee of the Authority who is displaced as a result of a contract and is hired by the contractor who was awarded the contract which displaced the employee shall be entitled to the benefits provided by the Service Contract Act of 1965, 41 U.S.C. § 351 et seq., not withstanding any exclusion of applicability of the Service Contract Act of 1965 to the employee;

(11) To establish, adjust, levy, collect, and abate charges for services, facilities, or commodities furnished or supplied by it;

(12) To refund overcharges for services, facilities, or commodities furnished or supplied by it;

(13) To undertake any public project, acquisition, construction, or any other act necessary to carry out its purposes;

(14) To maintain, repair, operate, extend, enlarge, investigate, design, construct, and improve the water distribution and sewage collection, treatment, and disposal systems;

(15) To engage in activities, programs, and projects on its own behalf or, with the concurrence of the Mayor, jointly with other public bodies or political divisions or subdivisions of the District of Columbia;

(16) To provide for the cost of activities, programs, and projects from grants, loans, the proceeds of bonds, or from other revenues available to the Authority for such purposes;

(17) To exercise any power usually possessed by public enterprises or private corporations performing similar functions that is not in conflict with the District of columbia Home Rule Act [§ 1-201.01 et seq.], or the laws of the District;

(18) To implement all rules, regulations, and laws relating to the distribution of water and sewage collection, treatment, and disposal, other than those laws that impose a penalty of imprisonment;

(19) To shut off water and sewer service, after notice, for good and sufficient cause;

(20) To purchase and distribute potable water to the inhabitants of the District;

(21) To purchase and distribute potable water to other jurisdictions as provided by law;

(22) To develop policies related to the proper use and distribution of water to households and public and private institutions during times of normal consumption and during emergency situations;

(23) To construct water mains and sewers in any street, avenue, road, or alley in the District under conditions as the Mayor may prescribe;

(24) To petition the Mayor to acquire property through eminent domain;

(25) To enter into contracts, including leases and lease-purchase agreements involving real property and personal property;

(26) To indicate in its records the existence and location of sewers and service sewers within its jurisdiction;

(27) To determine whether potable water should be used for mechanical and manufacturing purposes, private fountains, and street and pavement washers;

(28) To privatize the day-to-day operations of the Blue Plains Wastewater Treatment Plant; provided, that the Board of Directors of the Authority submit its recommendation on the feasibility of privatization pursuant to § 34-2202.05(g)(1) and submits the privatization contract pursuant to § 34-2202.05(g)(2);

(29) To enter into a financing lease, a service agreement or other arrangement for contracted services; obligations with respect to credit facilities; and interest rate swaps, interest rate caps, interest rate floors and any other interest rate-related hedge agreements entered into by the Authority for the purpose of interest rate risk and asset management that may be, but need not be, entered into in conjunction with the issuance of bonds or notes by the Authority;

(30) To do all things necessary or convenient to carry out the powers expressly provided by this chapter;

(31) To determine whether churches, charitable organizations, or institutions that receive annual appropriations from Congress should be furnished with water or sewer service without charge;

(32) To collect and receive its revenues and disburse its necessary and reasonable expenses; and

(33) In collaboration with the Fire and Emergency Medical Services Department, to inspect, repair, and maintain all public fire hydrants, and to ensure that each hydrant will provide adequate flow levels to all locations in the District of Columbia.

(Apr. 18, 1996, D.C. Law 11-111, § 203, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(c), 43 DCR 4265; Apr. 9, 1997, D.C. Law 11-255, § 45, 44 DCR 1271; May 13, 2008, D.C. Law 17-158, § 2, 55 DCR 3709.)

Section references. — This section is referred to in § 34-2202.07.

Prior Codifications. — 1981 Ed., § 43-1673.

Effect of amendments. — D.C. Law 17-158 added par. (33).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of the Fire Hydrant Inspection, Repair, Maintenance, and Fire Preparedness Temporary Amendment Act of 2007 (D.C. Law 17-77, January 23, 2008, law notification 55 DCR 1457).

Emergency legislation. — For temporary amendment of section, see § 2(c) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(c) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(c) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(c) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

For temporary approval of a multiyear contract with the United States of America for potable water, see §§ 2 and 3 of the Multiyear Water Purchase Agreement Emergency Amendment Act of 1997 (D.C. Act 12-116, July 28, 1997, 44 DCR 4504).

For temporary (90 day) amendment of section, see § 2(a) of Fire Hydrant Inspection, Repair, Maintenance, and Fire Preparedness Emergency Amendment Act of 2007 (D.C. Act 17-175, November 2, 2007, 54 DCR 11219).

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 11-184. — For legislative history of D.C. Law 11-184, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 17-158. — Law 17-158 the "Fire Hydrant Inspection, Repair, and Maintenance Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-437 which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on February 5, 2008, and March 4, 2008, respectively. Signed by the Mayor on March 19, 2008, it was assigned Act No. 17-331 and transmitted to both Houses of Congress for its review. D.C. Law 17-158 became effective on May 13, 2008.

CASE NOTES

ANALYSIS

In general.
Real and personal property.

In general.

Argument that the trial court should have referred claims by the District of Columbia Water and Sewer Authority (WASA) to the Contract Appeals Board for an administrative adjudication under the doctrine of primary jurisdiction could not be raised for the first time on appeal; the contention was not presented to the trial court. D.C. Water & Sewer Auth. v. Delon Hampton & Assocs., 851 A.2d 410, 2004 D.C. App. LEXIS 268 (2004).

Claims by the District of Columbia Water and Sewer Authority (WASA) that it was third-party beneficiary of contract and that contractors committed professional negligence were not within the primary jurisdiction of the Contract Appeals Board as opposed to a court of general jurisdiction. D.C. Water & Sewer Auth. v. Delon Hampton & Assocs., 851 A.2d 410, 2004 D.C. App. LEXIS 268 (2004).

District of Columbia Water and Sewer Authority (WASA) was a separate corporate entity that was amenable to suit in its own name, and thus action against WASA was not an action against the District of Columbia that would require pre-suit notice. Dingwall v. District of Columbia Water & Sewer Auth., 766 A.2d 974, 2001 D.C. App. LEXIS 40 (2001), vacated by 773 A.2d 423, 2001 D.C. App. LEXIS 121 (D.C. 2001), reinstated by, remanded by 800 A.2d 686, 2002 D.C. App. LEXIS 307 (D.C. 2002).

Tenants, who alleged injury to owner of building due to negligence of District of Columbia Water and Sewer Authority (WASA), failed to allege any facts that would entitle them to recover damages for losses incurred by owner, such as some allegation that tenants were licensed to act in a representative capacity, and thus, tenants lacked standing to bring claim on behalf of owner. Dingwall v. District of Columbia Water & Sewer Auth., 766 A.2d 974, 2001 D.C. App. LEXIS 40 (2001), vacated by 773 A.2d 423, 2001 D.C. App. LEXIS 121 (D.C. 2001), reinstated by, remanded by 800 A.2d 686, 2002 D.C. App. LEXIS 307 (D.C. 2002).

Tenant, who fairly alleged that conduct by District of Columbia Water and Sewer Authority (WASA) made it impossible for them to obtain proper occupancy permits for their business and that they lost business as a result, had standing to prosecute claim for breach of covenant of quiet enjoyment/private nuisance. Dingwall v. District of Columbia Water & Sewer Auth., 766 A.2d 974, 2001 D.C. App. LEXIS 40 (2001), vacated by 773 A.2d 423, 2001 D.C. App. LEXIS 121 (D.C. 2001), reinstated by, remanded by 800 A.2d 686, 2002 D.C. App. LEXIS 307 (D.C. 2002).

Real and personal property.

Water and sewer authority acted within its authority in assigning lien for delinquent water and sewer charges; water and sewer authority had statutory authority to acquire, by purchase, gift, lease, or otherwise, and to own, hold, improve, use, sell, convey, exchange, transfer, lease, sublease, and dispose of real and personal property of every kind and character, or any interest therein, for its corporate purposes, and authority could undertake any public project, acquisition, construction, or any other act necessary to carry out its purposes. ETDH Assocs. v. Waterfall Ventures, LLC, 999 A.2d 22, 2010 D.C. App. LEXIS 349 (2010).

§ 34-2202.04. Establishment of a board of directors.

(a)(1) The Authority shall be governed by a board of directors ("Board") comprised of 11 members.

(2)(A) Six Board members shall be District residents, appointed by the Mayor with the advice and consent of the Council, of whom:

(i) No more than 4 may be District employees or officials; and

(ii) One shall be the Director of the District Department of the Environment or a cabinet-level officer, as determined by the Mayor.

(B) The nomination of a Board member shall be submitted to the Council for a 90-day period of review, excluding days of Council recess. If the Council does not approve the nomination by resolution within this 90-day review period, the nomination shall be deemed disapproved.

(3) The Mayor shall appoint persons recommended by the other participating jurisdictions to the remaining 5 Board positions. These 5 Board members shall only participate in decisions directly affecting the general management of joint-use sewerage facilities. Of the 5 non-District Board members appointed by the Mayor:

(A) One Board member shall be a person recommended by Fairfax County, Virginia, pursuant to jurisdictional law;

(B) Two Board members shall be persons recommended by Montgomery County, Maryland, pursuant to jurisdictional law; and

(C) Two Board members shall be persons recommended by Prince George's County, Maryland, pursuant to jurisdictional law.

(4) The Mayor shall also appoint an alternate for each Board member, in the same manner as set forth for Board members in paragraphs (2) and (3) of this subsection, who may attend all Board meetings but who may act only in the absence of the Board member for whom he or she has been appointed the alternate.

(b) Any Board member or alternate who is an employee of the District government, including an elected official, shall be removed from the Board upon leaving the employment of the District government or elected office.

(c) Any Board member or alternate who is an employee of the government of one of the other participating jurisdictions, including an elected official, may, upon leaving the employment of the government or elected office, have his or her membership on the Board terminated by the Mayor or, at the Mayor's initiative, following consultation with the appropriate official set forth in subsection (a)(3) of this section.

(d) Board members and alternates shall serve 4-year terms. Of the 11 Board members and alternates initially appointed to the Board, 3 District appointees and 2 other participating jurisdiction appointees shall serve 4-year terms, 2 District appointees and 2 other participating jurisdiction appointees shall serve 3-year terms, and 1 District appointee and 1 other participating jurisdiction appointee shall serve 2-year terms.

(e) Any person appointed to fill a vacancy on the Board shall be appointed only for the unexpired term of the Board member whose vacancy is being filled. If any Board member or alternate is appointed to fill an unexpired term with

more than 2 years remaining in the term, upon expiration of the term, that Board member or alternate shall be deemed to have served a full 4-year term. At the end of a term, a Board member or alternate shall continue to serve until a successor is appointed.

(f) The Mayor shall appoint a chairperson of the Board from among the 6 District Board members.

(g) The Mayor shall remove any Board member or alternate from office for misconduct or neglect of duty, as defined by the Board in its by-laws, or for other good cause, after notice to the Board member. Prior to removing a Board member or alternate appointed pursuant to subsection (a)(3) of this section, the Mayor shall consult with the official or officials who recommended the Board member or alternate. The Mayor shall also remove a Board member or alternate appointed pursuant to subsection (a)(3) of this section upon the request of the official or officials who recommended the board member or alternate, if grounds exist for removal under this subsection.

(h) Should a Board member or alternate be indicted for the commission of a felony, the Board member or alternate shall be automatically suspended from serving on the Board. Upon a final determination of guilt, the term of the Board member or alternate shall be automatically terminated. Upon a final determination of innocence, the Mayor may reinstate the Board member or alternate.

(i) All Board meetings shall be subject to the provisions of § 1-207.42.

(j) Before any meeting of the Board, Board members shall be notified of the meeting. Six Board members shall constitute a quorum for the transaction of business. The existence of a quorum and an affirmative vote of a majority of the members present, who are permitted to participate in the matter under consideration, shall be required to approve any Board action; except, that 7 affirmative votes shall be required for approval of the Authority's budget and 8 affirmative votes shall be required for the hiring or firing of the General Manager. No vacancy in membership shall impair the right of a quorum to exercise all rights and perform all duties of the Board.

(k) A Board member not otherwise compensated by the District or one of the other participating jurisdictions shall be entitled to compensation by the Authority at the rate of $50 per meeting, not to exceed $4,000 per year. Board members shall not be entitled to reimbursement for expenses, except that transportation, parking, or mileage expenses incurred in the performance of official duties of the Board may be reimbursed, not to exceed $20 per meeting.

(Apr. 18, 1996, D.C. Law 11-111, § 204, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(d), 43 DCR 4265; June 12, 1999, D.C. Law 12-285, § 4(d), 46 DCR 1355; Feb. 15, 2006, D.C. Law 16-51, § 201, 52 DCR 10812.)

Section references. — This section is referred to in § 1-523.01.

Prior Codifications. — 1981 Ed., § 43-1674.

Effect of amendments. — D.C. Law 16-51 rewrote subsec. (a)(2) which had read as follows: "(2) Six Board members shall be District residents, appointed by the Mayor with the advice and consent of the Council, of whom no more than 4 may be District employees or officials. The nomination of a Board member shall be submitted to the Council for a 90-day period of review, excluding days of Council recess. If the Council does not approve the

nomination by resolution within this 90-day review period, the nomination shall be deemed disapproved."

Emergency legislation. — For temporary amendment of section, see § 2(d) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(d) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(d) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(d) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

For temporary (90-day) amendment of section, see § 4(d) of the Confirmation Act Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-92, June 15, 1999, 46 DCR 5330).

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 11-184. — For legislative history of D.C. Law 11-184, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 12-285. — Law 12-285, the "Confirmation Amendment Act of 1998," was introduced in Council and assigned Bill No. § 12-261, which was referred to the Committee on government Operations. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 29, 1998, it was assigned Act No. 12-622 and transmitted to both Houses of Congress for its review. D.C. Law 12-285 became effective on June 12, 1999.

Legislative history of Law 16-51. — Law 16-51, the "District Department of the Environment Establishment Act of 2005", was introduced in Council and assigned Bill No. 16-16 which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on July 6, 2005, and November 15, 2005, respectively. Signed by the Mayor on December 2, 2005, it was assigned Act No. 16-213 and transmitted to both Houses of Congress for its review. D.C. Law 16-51 became effective on February 15, 2006.

§ 34-2202.05. Duties of the Board.

(a) The Board shall have the following duties:

(1) To adopt and publish internal operating rules for the conduct of Board meetings;

(2) To develop policies for the management, maintenance, and operation of water distribution and sewage collection, treatment, and disposal systems under the control of the Authority;

(3) Adopt and publish rules and regulations governing the operation of the water distribution and sewage collection, treatment, and disposal systems under the control of the Authority;

(4) Develop and establish a personnel system and publish rules and regulations setting forth minimum standards for all employees, including pay, contract terms, leave, retirement, health and life insurance, and employee disability and death benefits;

(5) Select, employ, and fix the compensation and benefits for the General Manager and for the staff of the Board, as it deems necessary;

(6) Delegate to the General Manager any authority granted to the Board under subsection (a)(2) through (5) of this section; and

(7) To establish a procurement system which is consistent with principles of competitive procurement and to publish rules and regulations relating thereto.

(b)(1) The personnel system developed pursuant to subsection (a)(4) of this section shall be in place no later than 6 months after April 18, 1996. The personnel rules and regulations shall require that no employee shall engage in

outside employment, private business activity, or have any direct or indirect financial interest that conflicts, or would appear to conflict, with the fair, impartial, and objective performance of the employee's assigned duties and responsibilities.

(2) Department of Public Works employees whose salaries are funded by the Water and Sewer Utility Administration shall become employees of the Authority without impairment of civil service status and seniority, reduction in compensation (notwithstanding any change in job titles or duties, and except as may otherwise be provided under the personnel system developed pursuant to subsection (a)(4) or a collective bargaining agreement entered into after April 18, 1996) or loss of accrued rights to holidays, leave, and benefits. All employees of the Authority shall perform their duties under the direction, control, and supervision of the Authority; provided, however, that any employee subject to transfer whose existing duties and responsibilities are determined by the Authority and the Department of Public Works to relate directly and primarily to functions of the Department of Public Works, and for whom a position at the Department of Public Works is funded in whole or in part, shall remain an employee of the Department of Public Works and shall continue to perform duties under the direction, control, and supervision of the Department of Public Works and not under funding arrangements thereafter derived from the accounts of the Authority.

(c) The Board shall prepare, within 120 days after the end of each District government fiscal year, a detailed annual report setting forth a description of the Authority's operations and accomplishments during the year and shall transmit copies of the report to the Mayor and the Council.

(d) The Board shall contract with an independent certified public accountant to perform an annual audit of the books and accounts of the Authority and shall submit the audit to the Mayor, the Chief Financial Officer, and the Inspector General.

(e) The Board shall annually develop, adopt, and submit to the Mayor a multiyear financial plan for capital and operating expenses encompassing at least the forthcoming 5 fiscal years. The plan shall be submitted to the Mayor no less than 90 days prior to the beginning of each District government fiscal year.

(f) The Board shall carry insurance sufficient to protect the Authority, the Board, the Board members, officers, and employees of the Board, its lessees or occupants, the District government, and other participating jurisdictions against risks associated with the exercise by the Authority or the Board of any authority conferred by this chapter; provided, however, that no Board member shall be personally liable for any act or omission of the Authority, except with regard to any fraudulent or criminally prosecutable act committed by a Board member in connection with an act or omission of the Authority.

(g)(1) The Board shall assess the feasibility, including the financial benefits, if any, of engaging a private entity to lease, or purchase all or any portion of the Blue Plains Wastewater Treatment Plant. This assessment shall be completed no later than 6 months after April 18, 1996. The Board shall submit its recommendation to the Mayor who shall submit his or her recommendation to the Council within 60 days of receiving the Board's recommendation.

(2) No contract to privatize the Blue Plains Wastewater Treatment Plant shall be entered into by the Authority, unless the Board submits the privatization contract to the Mayor, the Mayor approves and submits the contract to the Council, and the Council approves the contract pursuant to § 1-204.51(b)(1) and the Council Contract Approval Modification Temporary Act of 1996, effective April 9, 1997 (D.C. Law 11-190; 43 DCR 4279) ("Contract Approval Act") and succeeding laws.

(3) No contract to purchase or lease all or any portion of the Blue Plains Wastewater Treatment Plant shall be entered into by the Authority unless the Board submits the sale or lease contract to the Mayor, the Mayor approves and submits the contract to the Council, and the Council approves the contract pursuant to § 1-204.51(b)(1) and the Contract Approval Act and any succeeding laws.

(4) Notwithstanding any other law, any agreement or contract to operate the Blue Plains Treatment Plant shall reserve to the District the right of access and use of any water front property, including the concrete pier.

(h)(1) Within 60 days of September 18, 2007, the Board shall contract with an independent consultant to conduct a comprehensive review of the Authority's operating and capital budgets, plans, and programs, including a review of the merits of and the timetable for all planned capital expenditures.

(2) Within 240 days of September 18, 2007, the Board shall receive the independent consultant's report, with recommendations for maximizing potential savings to the District's rate-payers over the course of the implementation of both the Capital Improvement Program and the Long Term Control Plan, and shall transmit copies of the report to the Mayor and the Council within one week of its receipt by the Board.

(Apr. 18, 1996, D.C. Law 11-111, § 205, 43 DCR 548; Aug. 8, 1996, 110 Stat. 1698, Pub. L. 104-184, § 5; Apr. 9, 1997, D.C. Law 11-184, § 202(e), 43 DCR 4265; Sept. 18, 2007, D.C. Law 17-20, § 6062(b), 54 DCR 7052.)

Section references. — This section is referred to in §§ 34-2202.03 and 34-2202.07.

Prior Codifications. — 1981 Ed., § 43-1675.

Effect of amendments. — D.C. Law 17-20 added subsec. (h).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of the Fire Hydrant Inspection, Repair, Maintenance, and Fire Preparedness Temporary Amendment Act of 2007 (D.C. Law 17-77, January 23, 2008, law notification 55 DCR 1457).

Emergency legislation. — For temporary amendment of section, see § 2(e) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(e) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5689), § 2(e) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(e) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

For temporary (90 day) amendment of section, see § 6062(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 2(b) of Fire Hydrant Inspection, Repair, Maintenance, and Fire Preparedness Emergency Amendment Act of 2007 (D.C. Act 17-175, November 2, 2007, 54 DCR 11219).

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 11-184. — For legislative history of D.C. Law 11-184, see His-

torical and Statutory Notes following § 34-2201.01.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 34-1514.

Resolutions. — Resolution 17-612, the "District of Columbia Water and Sewer Authority Plan for Public Fire Hydrant Maintenance and the Provision of Adequate Water Levels to District Hydrants Approval Resolution of 2008", was approved effective May 6, 2008.

§ 34-2202.06. General Manager; employment and duties.

(a) The Board, by the affirmative vote of 8 of its members, shall employ a General Manager who shall be the chief administrative officer of the Authority. The General Manager shall not be a member of the Board and shall serve at the pleasure of the Board. The General Manager shall perform duties as determined by the Board.

(b) The General Manager, in his or her sole discretion, may restrict combined sewer flow into the District from Maryland and Virginia, so long as the action does not violate § 34-2202.18.

(Apr. 18, 1996, D.C. Law 11-111, § 206, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(f), 43 DCR 4265; Feb. 6, 2008, D.C. Law 17-108, § 213(a), 54 DCR 10993; July 15, 2008, 122 Stat. 2491, Pub. L. 110-273, § 4(a); Mar. 25, 2009, D.C. Law 17-370, § 3(a), 56 DCR 1350.)

Prior Codifications. — 1981 Ed., § 43-1676.

Effect of amendments. — D.C. Law 17-108 inserted "The General Manager shall be a resident of the District and shall remain a District resident for the duration of his or her employment by the Authority. Failure to maintain District residency shall result in a forfeiture of the position."

Pub. L. 110-273 deleted the two sentences added by D.C. Law 17-108.

D.C. Law 17-370 designated subsec. (a); and added subsec. (b).

Emergency legislation. — For temporary amendment of section, see § 2(f) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(f) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(f) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(f) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 11-184. — For legislative history of D.C. Law 11-184, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 17-108. — For Law 17-108, see notes following § 34-804.

Legislative history of Law 17-370. — For Law 17-370, see notes following § 34-2107.

Effective date. — Section 4(b) of Pub. L. 110-273 provided that subsection (a) shall take effect as if included in the enactment of D.C. Law 17-172.

§ 34-2202.06a. Storm Water Administration. [Repealed].

Repealed.

(Apr. 18, 1996, D.C. Law 11-111, § 206a, as added June 9, 2001, D.C. Law 13-311, § 2(b), 48 DCR 3512; Mar. 25, 2009, D.C. Law 17-371, § 3(b), 56 DCR 1353.)

Legislative history of Law 13-311. — For D.C. Law 13-311, see notes following § 34-2202.01.

Legislative history of Law 17-371. — For Law 17-371, see notes following § 34-2202.01.

§ 34-2202.06b. Storm Water Permit Compliance Enterprise Fund. [Repealed].

Repealed.

(Apr. 18, 1996, D.C. Law 11-111, § 206b, as added June 9, 2001, D.C. Law 13-311, § 2(b), 48 DCR 3512; Mar. 25, 2009, D.C. Law 17-371, § 3(b), 56 DCR 1353.)

Legislative history of Law 13-311. — For D.C. Law 13-311, see notes following § 34-2202.01.

Legislative history of Law 17-371. — For Law 17-371, see notes following § 34-2202.01.

§ 34-2202.06c. Storm Water Advisory Panel. [Repealed].

Repealed.

(Apr. 18, 1996, D.C. Law 11-111, § 206c, as added June 9, 2001, D.C. Law 13-311, § 2(b), 48 DCR 3512; May 21, 2002, D.C. Law 14-137, § 11, 49 DRC 3444; Apr. 13, 2005, D.C. Law 15-354, § 52, 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 48(d), 53 DCR 6794; Mar. 25, 2009, D.C. Law 17-371, § 3(b), 56 DCR 1353.)

Effect of amendments. — D.C. Law 14-137, in subsec. (b), substituted "7" for "5"; in subsecs. (b)(4) and (b)(5), made nonsubstantive changes; and added subsecs. (b)(6) and (b)(7).

D.C. Law 15-354, in subsec. (b), inserted "District" preceding "Department of Transportation".

D.C. Law 16-191 validated a previously made technical change in the directory language of D.C. Law 15-534.

Legislative history of Law 13-311. — For D.C. Law 13-311, see notes following § 34-2202.01.

Legislative history of Law 14-137. — Law 14-137, the "Department of Transportation Establishment Act of 2002", was introduced in Council and assigned Bill No. 14-343, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on February 19, 2002, and March 5, 2002, respectively. Signed by the Mayor on March 26, 2002, it was assigned Act No. 14-313 and transmitted to both Houses of Congress for its review. D.C. Law 14-137 became effective on May 21, 2002.

Legislative history of Law 15-354. — Law 15-354, the "Technical Amendments Act of 2004", was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 34-209.

Legislative history of Law 17-371. — For Law 17-371, see notes following § 34-2202.01.

§ 34-2202.07. Water and Sewer Enterprise Fund; assets of the Water and Sewer Utility Administration of the Department of Public Works; transfer of funds and assets; pledge of revenues.

(a) There is established the Water and Sewer Authority Enterprise Fund ("Fund") which shall be the successor to the Water and Sewer Enterprise Fund

established pursuant to § 47-375(g). The Fund shall be operated by the Authority in accordance with generally accepted accounting principles.

(b) Subject to the provisions made by the Authority pursuant to this subchapter for security of revenue bonds, all revenues, proceeds, and moneys from whatever source derived, except those collected or received from the storm water fee, which are collected or received by the Authority shall be credited to the Fund and shall not, at any time, be transferred to, lapse into, or be commingled with the General Fund of the District of Columbia, the Cash Management Pool, or any other funds or accounts of the District of Columbia, except that funds shall be transferred to the District of Columbia Treasurer:

(1) To pay for goods, services, and property contracted for by the Authority from the District as authorized by § 34-2202.03(4) and (10) and § 34-2202.17(c);

(2) To make debt service payments required by subsection (f) of this section;

(3) To enable the Treasurer to make disbursements on the Authority's behalf until the Authority's own disbursement system is established, as authorized by § 34-2202.17(f); or

(4) As otherwise authorized by this subchapter.

(c) Repealed.

(d) Any pledge by the Authority of any funds on deposit in the Fund shall be effective, valid, perfected, and binding from the time the pledge is made with or without the delivery of any funds, and with or without any further action. Such pledge shall be effective, valid, perfected, and binding whether or not any statement, document, or instrument relating to such pledge is recorded or filed. The pledged revenues shall be immediately subject to the lien of the pledge, whether or not there has been any physical delivery. The lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against any person receiving distribution of revenues whether or not the parties have notice of the pledge.

(e) Within 120 days of April 18, 1996, the Mayor shall cause to be performed an independent audit of the assets and liabilities of the Department of Public Works, Water and Sewer Utility Administration. The independent audit shall also determine the present day value of services provided by the District government during the preceding 20-year period to the Water and Sewer Utility Administration, or any of its predecessor administrations or agencies. The audit shall determine the amount and adequacy of any funding provided by the Water and Sewer Utility Administration for these services. The Mayor shall provide the Council with a final version of the independent audit. Based upon the results of the independent audit, and notwithstanding the provisions of §§ 1-315.01 through 1-315.07, the Mayor shall, through an intra-District government transfer, permit the Authority to use any assets the Mayor considers to be required for the Authority's operations upon such terms and conditions as the Mayor finds appropriate, and shall transfer any liabilities that are directly attributable to the water distribution system or sewage collection, treatment, and disposal systems, other than the general obligation bonds referred to in subsection (f) of this section. The District government shall retain full legal title to, and a complete equitable interest in, all assets made

available for the Authority's use. Pending the intra-District government transfer required by this subsection, all assets and liabilities of the Water and Sewer Utility Administration, as indicated on the balance sheet prepared by the Water and Sewer Utility Administration just prior to April 18, 1996, shall be transferred for the Authority's use on an interim basis. Assets made available to the Authority pursuant to this subsection shall remain under the control of the Authority for as long as Authority revenue bonds are outstanding, unless all of the outstanding revenue bonds are defeased pursuant to § 34-2202.13, or otherwise.

(f) The Authority shall transfer to the General Fund of the District funds necessary for the District to make debt service payments on District general obligation bonds related to the Department of Public Works, Water and Sewer Utility Administration. The payments shall be in the amount and made at such times as the Treasurer of the District of Columbia requires in writing, and the payments shall continue until the District's general obligations bonds related to the Department of Public Works, Water and Sewer Utility Administration are fully paid.

(g)(1) Twelve months subsequent to the completion of the first full year of operation of the Authority, the chairperson of the Board shall cause a study to be undertaken to determine the feasibility of establishing the Authority as an independent regional authority and to make recommendations for the ongoing relationship of user jurisdictions to the Authority.

(2) The feasibility study shall include base-line data obtained pursuant to the requirements for annual reports as set forth in § 34-2202.05(c), (d), and (e), and the audit of the assets and liabilities of the Department of Public Works, Water and Sewer Utility Administration required by subsection (e) of this section.

(3) The study recommendations shall include the manner in which the District would be compensated by the Authority for the District's historic investment in the capital improvements and maintenance of the Blue Plains facility, should the Authority become an independent regional authority, as well as options for retention by the District of the land upon which any Authority plant and facilities are located within the boundaries of the District.

(4) Within 180 days of its inception, the study and its recommendations shall be completed and submitted to the Mayor, the Council, and the appropriate official of each of the other participating jurisdictions.

(Apr. 18, 1996, D.C. Law 11-111, § 207, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(g), 43 DCR 4265; June 9, 2001, D.C. Law 13-311, § 2(c), 48 DCR 3512.)

Section references. — This section is referred to in §§ 8-205, 34-2202.09, and 34-2202.13a.

Prior Codifications. — 1981 Ed., § 43-1677.

Effect of amendments. — D.C. Law 13-311, in subsec. (b), inserted ", except those collected or received from the storm water fee,".

Emergency legislation. — For temporary amendment of section, see § 2(g) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(g) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(g) of the Water and Sewer

Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(g) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 11-184. — For legislative history of D.C. Law 11-184, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 13-311. — For D.C. Law 13-311, see notes following § 34-2202.01.

§ 34-2202.08. Delegation of Council authority to issue bonds.

The Council delegates to the Authority the power of the Council under section 490 of the District of Columbia Home Rule Act (§ 1-204.90) to issue revenue bonds to finance, refinance, or assist in the financing or refinancing of any undertakings of the Authority pursuant to this chapter.

(Apr. 18, 1996, D.C. Law 11-111, § 208, 43 DCR 548.)

Section references. — This section is referred to in § 34-2202.03.

Prior Codifications. — 1981 Ed., § 43-1678.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Effective date. — Section 701 of D.C. Law 11-111 provided that the act, with the exception of sections 208 through 211, shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.03(c)), and a 30-day period of Congressional review as provided in section 602 (c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-206.02(c)(1)), and publication in the District of Columbia Register. Sections 208 through 211 of the act shall take effect upon the enactment by Congress of the legislation proposed in title IV of the act, or of substantially similar legislation.

§ 34-2202.09. Power of the Authority to issue revenue bonds and notes or other obligations.

(a) Except as provided in subsection (h) of this section, the Authority may at any time, and from time to time, issue revenue bonds (including refunding bonds, notes, or other obligations), by resolution, in one or more series to finance or refinance any cost. The resolution shall name the Chairperson of the Board or his or her designee as the authorized delegate to execute all documents related to the revenue bond financings or refinancings.

(b) Revenue bonds of the Authority are obligations payable from revenues of the Authority from whatever source derived, including certain dedicated revenues, earnings on the Fund, and any other revenue available to the Authority which may lawfully be used for these purposes.

(c) Regardless of their form or character, revenue bonds of the Authority are negotiable instruments for all purposes of the Uniform Commercial Code of the District of Columbia, approved December 30, 1963 (77 Stat. 631; § 28:1-101 et seq.), subject only to the provisions of the bonds for registration.

(d) No official, employee, or agent of the Authority shall be held personally liable solely because a revenue bond is issued.

(e) The issuance and performance of bonds by the Authority as contemplated in this chapter and the adoption of resolutions authorizing such bonds, notes, and other obligations shall be done in compliance with the requirements of this chapter, but shall not be subject to subchapter I of Chapter 5 of Title 2.

(f) The Authority shall have the power to borrow money and to issue revenue bonds regardless of whether or not the interest payable by the Authority incident to such loans or revenue bonds or the income derived by the holders of the evidence of such indebtedness or revenue bonds notes is, for the purposes of federal taxation, includable in the taxable income of the recipients of these payments or is otherwise not exempt from the imposition of taxation on the recipients.

(g) The Authority shall have the power to contract with the holders of its revenue bonds, as to the custody, collection, securing, investment, and payment of any monies of the Authority and of any monies held in trust or otherwise for the payment of revenue bonds.

(h) During each fiscal year in which debt service on the proposed bonds and outstanding revenue bonds issued by the Authority, and the transfer provided in § 34-2202.07(f) becomes due and payable, the Authority may not issue bonds, notes, or other obligations or borrow money unless the Authority first certifies, to the reasonable satisfaction of the District of Columbia Auditor, that the revenues of the Authority are sufficient to pay its costs, the principal of and interest on and other requirements pertaining to the proposed bonds and outstanding revenue bonds issued by the Authority, and amounts equal to the debt service payments on District general obligation bonds issued by the District prior to October 1, 1996, which financed Department of Public Works, Water and Sewer Utility Administration capital projects, as such bonds and transfers become due and payable. The Authority's certification shall be supported by expert study and analysis.

(i) The Authority shall set rates, fees, levies, and other charges which will result in the collection of amounts which, together with other Authority revenues available and applicable, will be at least sufficient to pay its costs, the principal of and interest on and other requirements pertaining to its bonds, and to make transfers to the District of amounts equal to the debt service payments on District general obligation bonds issued by the District prior to October 1, 1996, which financed Department of Public Works, Water and Sewer Utility Administration capital projects, as such bonds and transfers become due and payable.

(j) All bonds issued by the Authority shall be callable not more than 11 years after the date of the issuance of the respective bond.

(Apr. 18, 1996, D.C. Law 11-111, § 209, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(h), 43 DCR 4265; Mar. 24, 1998, D.C. Law 12-81, § 53, 45 DCR 745.)

Section references. — This section is referred to in § 34-2202.03.

Prior Codifications. — 1981 Ed., § 43-1679.

Emergency legislation. — For temporary amendment of section, see § 2(h) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160), § 2(h) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(h) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(h) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 11-184. — For legislative history of D.C. Law 11-184, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Effective date. — Section 701 of D.C. Law 11-111 provided that the act, with the exception of sections 208 through 211, shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.03(c)), and a 30-day period of Congressional review as provided in section 602 (c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-206.02(c)(1)), and publication in the District of Columbia Register. Sections 208 through 211 of the act shall take effect upon the enactment by Congress of the legislation proposed in title IV of the act, or of substantially similar legislation.

§ 34-2202.10. Delegation of Council authority to issue bonds.

(a) The Authority may stipulate by resolution the terms for sale of its bonds in accordance with this chapter, including the following:

(1) The date a note or bond bears;

(2) The denomination;

(3) Any interest rate or rates, or variable rate or rates changing from time to time, or premium or discount applicable;

(4) The registration privileges;

(5) The medium and method for payment; and

(6) The terms of redemption.

(b) The Authority may sell its bonds at public or private sale and may determine the price for sale.

(c) A resolution authorizing the sale of bonds may contain any of the following provisions, in which case these provisions shall be made part of the contract with holders of the bonds:

(1) The custody, security, expenditure, or application of proceeds of the sale of bonds of the Authority ("proceeds"), a pledge of the proceeds to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;

(2) A pledge of Authority revenues to secure payment and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;

(3) A pledge of assets of the Authority, other than those assets that the Mayor allows the Authority to use through an intra-District transfer, including

mortgages and obligations securing mortgages, to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;

(4) The proposed use of gross income from any mortgages owned by the Authority and payment of principal of mortgages owned by the Authority;

(5) The proposed use of reserves or sinking funds;

(6) The proposed use of proceeds from the sale of revenue bonds and a pledge of proceeds to secure payment;

(7) Any limitations on the issuance of revenue bonds, including terms or issuance and security, and the refunding of outstanding or other revenue bonds;

(8) Procedures for amendment or abrogation of a contract with holders of the revenue bonds, the amount of bonds, the holders of which must consent to the amendment, and the manner in which consent may be given;

(9) Any vesting in a trustee property, power, and duties, which may include the power and duties of a trustee appointed by holders of the revenue bonds;

(10) Limitations or abrogations of the right of holder of the revenue bonds to appoint a trustee;

(11) A defining of the nature of default in the obligations of the Authority to the holders of the revenue bonds and providing the rights and remedies of holders of the bonds in the event of default, including the right to the appointment of a receiver, in accordance with the general laws of the District and this chapter; and

(12) Any other provisions of like or different character that affect the security of holders of the revenue bonds.

(d) A pledge of the Authority is binding from the time it is made. Any funds, or property pledged, are subject to the lien of a pledge without physical delivery. The lien of a pledge is binding as against parties having any tort, contract, or other claim against the Authority regardless of notice. Neither the resolution stipulating the terms for sale of Authority bonds nor any other instrument creating a pledge need be recorded.

(e) The signature of any officer of the Authority which appears on a bond shall remain valid if that person ceases to hold office.

(f) The Authority may secure bonds by a trust indenture between the Authority and a corporate trustee that has trust company powers within the District.

(g) A trust indenture of the Authority may contain provisions for protecting and enforcing the rights and remedies of holders of the revenue bonds in accordance with the provisions of the resolution authorizing the sale of bonds.

(h) Subject to preexisting agreements with the holders of the revenue bonds, the Authority may purchase its own revenue bonds which may then be cancelled. The price the Authority pays in purchasing its own revenue bonds shall not exceed the following limits:

(1) If the revenue bonds are redeemable, the price shall not exceed the redemption price then applicable plus accrued interest to the next interest payment; or

(2) If the bonds are not redeemable, the price shall not exceed the redemption price applicable on the first date after the purchase upon which the bonds or notes become subject to redemption plus accrued interest to that date.

(i) The Authority may establish special or reserve accounts in furtherance of its authority under this chapter. Notwithstanding subsections (a) and (b) of this section and other applicable District law, and subject to agreements with holders of the bonds, the Authority shall manage its own funds, and may invest funds not required for disbursement in a manner consistent with industry practices.

(j) The bonds of the Authority are legal instruments in which public officers and public bodies of the District, insurance companies, insurance company associations, and other persons carrying on an insurance business, banks, bankers, banking institutions, including savings and loan associations, building and loan associations, trust companies, savings banks, savings associations, investment companies, and other persons carrying on a banking business, administrators, guardians, executors, trustees and other fiduciaries, and other persons authorized to invest in bonds or in other obligations of the District, may legally invest funds, including capital, in their control. The bonds are also securities which legally may be deposited with, and received by, public officers and public bodies of the District or any agency of the District for any purpose for which the deposit of bonds or other obligations of the District is authorized by law.

(k) The revenue bonds shall be special obligations of the District. The bonds shall be without recourse to the District. The bonds shall not be general obligations of the District, shall not be a pledge of or involve the faith and credit or the taking power of the District, shall not constitute a debt of the District, shall not constitute lending of the public credit for private undertakings as prohibited in § 1-206.02(a)(2), and shall not constitute debt for purposes of § 1-206.03.

(l) The revenue bonds shall not give rise to any pecuniary liability to the District and the District shall have no obligation with respect to the purchase of the bonds.

(m) Nothing contained in the revenue bonds, in the financing documents, or in the closing documents shall create any obligation on the part of the District to make payments with respect to the bonds from sources other than those listed for that purpose in this chapter.

(n) The District shall not have liability for the payment of any issuance costs or for any transaction or event to be effected by the financing documents.

(Apr. 18, 1996, D.C. Law 11-111, § 210, 43 DCR 548.)

Section references. — This section is referred to in § 34-2202.13.

Prior Codifications. — 1981 Ed., § 43-1680.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Effective date. — Section 701 of D.C. Law 11-111 provided that the act, with the exception of sections 208 through 211, shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority

Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.03(c)), and a 30-day period of Congressional review as provided in section 602 (c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-206.02(c)(1)), and publication in the District of Columbia Register. Sections 208 through 211 of the act shall take effect upon the enactment by Congress of the legislation proposed in title IV of the act, or of substantially similar legislation.

§ 34-2202.11. Delegation of Council authority to issue bonds.

The District pledges to the Authority and any holders of bonds that, except as provided in this chapter, the District will not limit or alter rights vested in the Authority to fulfill agreements made with holders of the bonds, or in any way impair the rights and remedies of the holders of the bonds until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the holders of the bonds are fully met and discharged. The Authority is authorized to include this pledge of the District in any agreement with the holders of the bonds.

(Apr. 18, 1996, D.C. Law 11-111, § 211, 43 DCR 548.)

Prior Codifications. — 1981 Ed., § 43-1681.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Effective date. — Section 701 of D.C. Law 11-111 provided that the act, with the exception of sections 208 through 211, shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.03(c)), and a 30-day period of Congressional review as provided in section 602 (c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-206.02(c)(1)), and publication in the District of Columbia Register. Sections 208 through 211 of the act shall take effect upon the enactment by Congress of the legislation proposed in title IV of the act, or of substantially similar legislation.

§ 34-2202.12. Transfer of funds. [Repealed].

Repealed.

(Apr. 18, 1996, D.C. Law 11-111, § 211, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(i), 43 DCR 4265.)

Prior Codifications. — 1981 Ed., § 43-1682.

Emergency legislation. — For temporary repeal of section, see § 2(i) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160), § 2(i) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(i) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), see § 2(i) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Legislative history of Law 11-184. — For legislative history of D.C. Law 11-184, see Historical and Statutory Notes following § 34-2201.01.

§ 34-2202.13. District repayment option.

(a) The District retains the right to direct the Authority to purchase its own bonds and notes, subject to the terms and conditions of § 34-2202.10(h), for the purpose of dissolving or altering the Authority after such bonds and notes are cancelled or defeased.

(b) The District further retains the right to direct the Authority to defease bonds, and the authority shall do so, conditioned upon the District providing moneys, which together with the moneys of the Authority available for defeasance, would be sufficient to satisfy the requirements of § 34-2202.13a(a)(1).

(Apr. 18, 1996, D.C. Law 11-111, § 213, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(j), 43 DCR 4265.)

Section references. — This section is referred to in § 34-2202.07.

Prior Codifications. — 1981 Ed., § 43-1683.

Emergency legislation. — For temporary amendment of section, see § 2(j) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(j) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(j) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(j) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 11-184. — For legislative history of D.C. Law 11-184, see Historical and Statutory Notes following § 34-2201.01.

§ 34-2202.13a. Defeasance of bonds.

(a) The Authority's bonds shall no longer be considered outstanding and unpaid and shall be deemed fully met and discharged for the purposes of § 34-2202.07(e) and the security provided by the pledges of and liens on, revenues, assets, and property, if the Authority:

(1) Deposits with an escrow agent, which shall be a bank, trust company, or national banking association with requisite trust powers, in a separate defeasance escrow account, established and maintained by the escrow agent solely at the expense of the Authority and held in trust for the bond owners, sufficient moneys or direct obligations of the United States, principal of and interest on which, when due and payable, will provide sufficient moneys, together with moneys so deposited, to pay when due the principal and interest of bonds issued by the Authority to be defeased; and

(2) Delivers to the defeasance escrow agent an irrevocable letter of instruction to apply the moneys or investments to the payment of the principal of and interest on the bonds issued by the Authority to be defeased as they become due and payable.

(b) The defeasance escrow agent shall not invest the defeasance escrow account in any investment callable at the option of its issuer if the call could result in less than sufficient moneys being available for the purposes required by this section.

(c) The defeasance escrow account specified in subsection (a) of this section may be established and maintained without regard to any limitations placed on these accounts by any act or resolution of the Authority now existing or adopted after April 9, 1997, except for this chapter.

(Apr. 18, 1996, D.C. Law 11-111, § 213a, as added Apr. 9, 1997, D.C. Law 11-184, § 202(k), 43 DCR 4265.)

Section references. — This section is referred to in § 34-2202.13.

Prior Codifications. — 1981 Ed., § 43-1683.1.

Emergency legislation. — For temporary addition of section, see § 2(k) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary addition of section, see § 2(k) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(k) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(k) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Legislative history of Law 11-184. — For legislative history of D.C. Law 11-184, see Historical and Statutory Notes following § 34-2201.01.

§ 34-2202.14. Procurement system inapplicable.

Except as provided in § 34-2202.17(b), § 2-301 et seq. shall not apply to the Authority.

(Apr. 18, 1996, D.C. Law 11-111, § 214, 43 DCR 548.)

Section references. — This section is referred to in § 34-2202.02.

Prior Codifications. — 1981 Ed., § 43-1684.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

§ 34-2202.15. Merit personnel system inapplicable.

(a) Except as provided in this section and in § 34-2202.17(b), no provision of § 1-601.01 et seq., shall apply to employees of the Authority except as follows:

(1) Subchapters V and XVII of Chapter 6 of Title 1 shall apply to all employees of the Authority; and

(2) Subchapters XII, XXI, XXII, and XXVI of Chapter 6 of Title 1 shall apply to employees transferred to the Authority who are covered under the Civil Service Retirement System and the District of Columbia Defined Contribution Pension Plan; provided, that all Authority employees continuously employed by the District government since December 31, 1979, shall be guaranteed rights and benefits at least equal to those currently applicable to such persons under provisions of law and rules and regulations in force prior to April 18, 1996.

(b) An employee of the Authority who is covered under the District of Columbia Defined Contribution Pension Plan, who meets the minimum requirements for participation in a retirement plan established by the Authority, may, upon written notice to the Authority, elect, instead, to be covered by the Authority's plan.

(c) Repealed.

(Apr. 18, 1996, D.C. Law 11-111, § 215, 43 DCR 548; Feb. 6, 2008, D.C. Law 17-108, § 213(b), 54 DCR 10993; July 15, 2008, 122 Stat. 2491, Pub. L. 110-273, § 4(a).)

Section references. — This section is referred to in § 34-2202.02.

Prior Codifications. — 1981 Ed., § 43-1685.

Effect of amendments. — D.C. Law 17-108 added subsec. (c).

Pub. L. 110-273 repealed subsec. (c), as added by D.C. Law 17-108.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 17-108. — For Law 17-108, see notes following § 34-804.

Effective date. — Section 4(b) of Pub. L. 110-273 provided that subsection (a) shall take effect as if included in the enactment of D.C. Law 17-172.

§ 34-2202.16. Charges and fees and rate setting.

(a) The Authority shall collect and abate charges, fees, assessments, and levies for services, facilities, or commodities furnished or supplied by it.

(b) The Authority shall, following notice and public hearing, establish and adjust retail water and sewer rates. The District members of the Board shall establish the retail water and sewer rates prior to the Board's consideration of the Authority's budget. The water and sewer rates levied by the Authority shall only be a source of revenue for the maintenance of the District's supply of water and sewage systems, and shall constitute a fund exclusively to defray any cost of the Authority.

(b-1)(1) The Authority shall offer financial assistance programs to mitigate the impact of any increases in retail water and sewer rates on low-income residents of the District, including a low-impact design incentive program.

(2) Within 6 months of March 25, 2009, the authority shall provide a report to the Council of the District of Columbia detailing the number of low-income residents affected by increases in retail water and sewer rates and strategies that will significantly increase enrollment in existing discount programs available to low-income ratepayers.

(c) In the absence of applicable standards, charges shall be levied and collected as determined by the Authority in accordance with § 1-204.87(b).

(d) The Authority may impose additional charges and penalties for late payment of bills.

(d-1) The Authority shall collect a stormwater user fee established by the Director of the District Department of the Environment ("Director"), which charge the Director shall establish by rule and may from time to time amend.

(d-2) The fee shall be collected from each property in the District of Columbia, and shall be based on an impervious area assessment of the property.

(d-3) The Mayor shall coordinate the development and implementation of the MS4 stormwater user fee with DC WASA's impervious area surface charge, to ensure that both fee systems employ consistent methodologies.".

(d-4) The Mayor shall offer financial assistance programs to mitigate the impact of any increases in stormwater user fees on low-income residents of the District, and shall evaluate the applicability of similar existing District low-income assistance programs to the stormwater user fee.

(d-5) A landlord shall not pass a stormwater user fee charge to a tenant which is more than the stormwater user fee charge prescribed by the Director

(d-6) The stormwater user fee shall be the obligation of the property owner. Failure to pay the stormwater user fee shall result in a lien being placed upon the property without further notice to the owner. The Mayor may enforce the lien in the same manner as in § 34-2407.02.

(d-7) Any owner or occupant of a property that is charged a stormwater user fee may contest a stormwater user fee bill rendered for managing stormwater runoff, according to the same procedures provided to owners or occupants of properties that receive water and sewer services, under § 34-2305.

(e) The Authority is authorized to shut off the water distribution to any building, establishment, or other place upon failure of the owner or occupant thereof to pay the charges, including the storm water fee, within 90 days from the date of rendition of the bill.

(Apr. 18, 1996, D.C. Law 11-111, § 216, 43 DCR 548; June 9, 2001, D.C. Law 13-311, § 2(d), 48 DCR 3512; Aug. 16, 2008, D.C. Law 17-219, § 6009, 55 DCR 7598; Mar. 25, 2009, D.C. Law 17-370, § 3(b), 56 DCR 1350; Mar. 25, 2009, D.C. Law 17-371, § 3(c), 56 DCR)

Prior Codifications. — 1981 Ed., § 43-1686.

Effect of amendments. — D.C. Law 13-311 inserted subsecs. (d-1) and (d-2).

D.C. Law 17-219 added subsec. (d-3).

D.C. Law 17-370 added subsec. (b-1).

D.C. Law 17-371 rewrote subsecs. (d-1), (d-2), and (d-3); and added subsecs. (d-4), (d-5), (d-6), and (d-7).

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 13-311. — For D.C. Law 13-311, see notes following § 34-2202.01.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 34-808.01.

Legislative history of Law 17-370. — For Law 17-370, see notes following § 34-2107.

Legislative history of Law 17-371. — For Law 17-371, see notes following § 34-2202.01.

CASE NOTES

In general.

Water and Sewer Authority (WASA) was precluded from raising on appeal its claim that Public Service Commission (PSC) rushed in approving settlement regarding unbundled electricity rate issues, where WASA did not raise that argument in its application for reconsideration of PSC's order. District of Columbia v. PSC of D.C., 802 A.2d 373, 2002 D.C. App. LEXIS 376 (2002).

Action of District of Columbia Water and Sewer Authority (WASA) in adopting interim rates applicable to prior beneficiaries of preferential water and sewer rates, which had been abolished by District Council through legislation, constituted the "establishment of rates," which was subject to notice and public hearing requirements under WASA Act, and thus, lack of public hearing prior to adoption of rates rendered rates invalid, even though rates were temporary in nature, and were at the same level as those previously charged to paying consumers. Jubilee Hous., Inc. v. District of Columbia Water & Sewer Auth., 774 A.2d 281, 2001 D.C. App. LEXIS 123 (2001).

Nothing in the legislation creating District of Columbia Water and Sewer Authority (WASA), and giving it the authority to establish rates following notice and public hearing, excuses compliance with notice and hearing requirements in exigent situations. Jubilee Hous., Inc. v. District of Columbia Water & Sewer Auth., 774 A.2d 281, 2001 D.C. App. LEXIS 123 (2001).

§ 34-2202.16a. Low-impact design incentive program and fee discounts.

(a) Within one year of March 25, 2009, the Authority shall establish, together with the District Department of the Environment ("DDOE"), a low-impact design incentive program within the DDOE, to reduce the surface area that either prevents or retards the entry of water into the ground as occurring under natural conditions, or that causes water to run off the surface in greater quantities or at an increased rate of flow, relative to the flow present under natural conditions.

(b) The Authority and the DDOE will continue to collect and document the effects of the low-impact design techniques throughout the District on reducing stormwater runoff and the possible implications of how proven, long-term reductions in stormwater runoff may be used to renegotiate the consent decree and reduce the cost and size of the Long-Term Control Plan.

(c) Impervious surface fee discounts approved by the Authority shall be retroactive to no earlier than the date of the implementation of the impervious surface fee. A property owner may not qualify for an impervious surface fee discount until the stormwater management measures for which the property owner seeks a discount are demonstrated to be fully functional.

(Apr. 18, 1996, D.C. Law 11-111, § 216a, as added Mar. 25, 2009, D.C. Law 17-370, § 3(c), 56 DCR 1350.)

Legislative history of Law 17-370. — For Law 17-370, see notes following § 34-2107.

§ 34-2202.17. Transition provisions.

(a) Until the initial meeting of the Board, but for not longer than 180 days from April 18, 1996, the existing management structure of the Water and Sewer Utility Administration, Department of Public Works shall serve as the operator of the Authority, thereafter, the Water and Sewer Utility Administration of the Department of Public Works shall be abolished.

(b) Until the Board establishes a personnel system and a procurement system, and until rules and regulations pertaining to the Board's duties have been promulgated, § 2-301.1 et seq. and § 1-601.01 et seq., and implementing rules and regulations shall continue to apply to the Authority.

(c) The administration of payroll services and personnel services, including benefits administration, shall be provided to the Authority by the Office of Pay and Retirement and the District of Columbia Office of Personnel at a negotiated fee. These services may be terminated by the Authority upon written notice to each provider.

(d) All collective bargaining agreements shall remain in effect until they expire, or until they are renegotiated by the Authority, whichever comes first, unless otherwise agreed upon by the parties to the collective bargaining agreements.

(e) The Treasurer of the District of Columbia shall collect retail water and sewer payments on the Authority's behalf until the Authority notifies the

Treasurer that an independent collection system has been established and that retail water and sewer customers have been notified of any changes in payment procedures. Water and sewer payments collected by the Treasurer shall be expeditiously deposited into the Fund and shall not be commingled with the Cash Management Pool, the General Fund, or any other funds or accounts of the District of Columbia, except that payments made to District cashiers may be deposited directly into a District disbursement account until the Authority notifies the Treasurer that an independent disbursement system has been established. Dedicated revenues received by the District Treasurer shall be subject to any pledge of the Authority as if deposited into the Fund.

(f) The Treasurer of the District of Columbia is authorized to transfer funds from the Fund to a District disbursement account in order to pay the necessary and reasonable expenses of the Authority until the Authority notifies the Treasurer that an independent disbursement system has been established.

(Apr. 18, 1996, D.C. Law 11-111, § 217, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(l), 43 DCR 4265.)

Section references. — This section is referred to in §§ 34-2202.07, 34-2202.14, and 34-2202.15.

Prior Codifications. — 1981 Ed., § 43-1687.

Emergency legislation. — For temporary amendment of section, see § 2(l) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(l) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(l) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(l) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 11-184. — For legislative history of D.C. Law 11-184, see Historical and Statutory Notes following § 34-2201.01.

§ 34-2202.18. Existing agreements.

This chapter shall not serve as an amendment, alteration, modification, or repeal of any contract or any regional agreement to which the District government is a party, including the 1985 Blue Plains Intermunicipal Agreement.

(Apr. 18, 1996, D.C. Law 11-111, § 218, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(m), 43 DCR 4265.)

Prior Codifications. — 1981 Ed., § 43-1688.

Emergency legislation. — For temporary amendment of section, see § 2(m) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(m) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(m) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(m) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2201.01.

Legislative history of Law 11-184. — For legislative history of D.C. Law 11-184, see His-

torical and Statutory Notes following § 34-2201.01.

§ 34-2202.19. Transfer of function and redelegation of authority.

(a) All of the functions transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, that have been delegated to the Water and Sewer Utility Administration are hereby transferred to the Water and Sewer Authority as follows:

(1) Pursuant to Part III(I), authority to plan, manage, and contract for design, engineering, and construction of the District's water and sewer facilities;

(2) Pursuant to Part III(K), authority to provide complete water and sewer utility systems including the provision of an adequate and potable water supply; water distribution, measurement, and billing; the collection and treatment of sewage; and the construction and maintenance of all related facilities on a cost basis; and

(3) Pursuant to Part IV(E), the functions of the Department of Environmental Services as set forth in Commissioners Order No. 71-255, dated July 27, 1971, except for the functions of the Office of Environmental Standards and Quality Assurance, which were transferred to the Department of Consumer and Regulatory Affairs, on the effective date of Reorganization Plan No. 4 of 1983.

(b) Any other functions not specified in this section that are now delegated to or vested in the Administrator of the Water and Sewer Utility Administration are hereby transferred to the Water and Sewer Utility Authority, including the power to obtain and enforce liens for the failure to pay any charge, fee, assessment, or levy authorized or required by § 34-2202.16 in accordance with §§ 34-2407.02 and 34-2110.

(Apr. 18, 1996, D.C. Law 11-111, § 219, 43 DCR 548; June 9, 2001, D.C. Law 13-311, § 2(e), 48 DCR 3512.)

Prior Codifications. — 1981 Ed., § 43-1689.

Effect of amendments. — D.C. Law 13-311, in subsec. (b), inserted "for the failure to pay any charge, fee, assessment, or levy authorized or required by § 34-2202.16".

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2202.01.

Legislative history of Law 13-311. — For D.C. Law 13-311, see notes following § 34-2202.01.

References in text. — Reorganization Plan No. 4 of 1983, referred to throughout (a), is located at part D of subchapter VI of Chapter 15 of Title 1.

§ 34-2202.20. No inurement to private persons; exemption from District taxation.

(a) All rights, property and assets of the Authority shall transfer automatically to the District government upon dissolution of the Authority.

(b) None of the property, assets or earnings of the Authority shall inure to any private person or entity.

(c) The Authority, its income, property, and transactions shall be exempt from District taxes.

(Apr. 18, 1996, D.C. Law 11-111, § 220, as added Apr. 9, 1997, D.C. Law 11-184, § 202(n), 43 DCR 4265.)

Prior Codifications. — 1981 Ed., § 43-1690.

Emergency legislation. — For temporary addition of section, see § 2(n) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary addition of section, see § 2(n) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(n) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(n) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Legislative history of Law 11-184. — For legislative history of D.C. Law 11-184, see Historical and Statutory Notes following § 34-2201.01.

Subchapter III. Enterprise Fund Operation and Maintenance Account.

§ 34-2202.41. Operation and Maintenance Account.

(a)(1) *Contents of account.* — There is hereby established within the Water and Sewer Enterprise Fund the Operation and Maintenance Account, consisting of all funds paid to the District of Columbia on or after April 26, 1996 which are:

(A) Attributable to waste water treatment user charges;

(B) Paid by users jurisdictions for the operation and maintenance of the Blue Plains Wastewater Treatment Facility and related waste water treatment works; or

(C) Appropriated or otherwise provided for the operation and maintenance of the Blue Plains Wastewater Treatment Facility and related waste water treatment works.

(2) *Use of funds in account.* — Funds in the Operation and Maintenance Account shall be used solely for funding the operation and maintenance of the Blue Plains Wastewater Treatment Facility and related waste water treatment works and may not be obligated or expended for any other purpose, and may be used for related debt service and capital costs if such funds are not attributable to user charges assessed for purposes of section 204(b)(1) [33 U.S.C. § 1284(b)(1)] of the Federal Water Pollution Control Act.

(b) *EPA Grant Account.* —

(1) *Contents of account.* — There is hereby established within the Water and Sewer Enterprise Fund and EPA Grant Account, consisting of all funds paid to the District of Columbia on or after April 26, 1996, which are:

(A) Attributable to grants from the Environmental Protection Agency for construction at the Blue Plains Wastewater Treatment Facility and related waste water treatment works; or

(B) Appropriated or otherwise provided for construction at the Blue

Plains Wastewater Treatment Facility and related waste water treatment works.

(2) *Use of funds in account.* — Funds in the EPA Grant Account shall be used solely for the purposes specified under the terms of the grants and appropriations involved, and may not be obligated or expended for any other purpose.

(Apr. 26, 1996, 110 Stat. 1321 224, Pub. L. 104-134, § 154.)

Prior Codifications. — 1981 Ed., § 43-1677.1.

References in text. — "Section 204(b)(1) of the Federal Water Pollution Control Act," referred to in (a)(2), is classified as 33 U.S.C. § 1284(b)(1).

CHAPTER 23. WATER AND SEWER SERVICES AMNESTY PROGRAM, RECEIVERSHIP PROVISION, AND ADMINISTRATIVE REVIEW.

Sec.
34-2301. Definitions.
34-2302. Amnesty program.
34-2303. Opportunity for a tenant to receive service in own name; payment made by tenant.
34-2304. Appointment of receiver.
34-2305. Administrative review.
34-2306. Rules.

§ 34-2301. Definitions.

For the purposes of this chapter, the term:

(1) "Owner" means any individual, corporation, association, or partnership listed as the legal title holder of record.

(2) "Rental property" means any real property consisting of 1 or more units that is leased or subleased to a person with the consent of the owner or the owner's agent, in consideration for rental payment.

(3) "Tenant" means any person who holds or possesses a habitation in subordination to the title of the owner of the premises in which the habitation is located, with the consent of the owner.

(May 18, 1954, ch. 218, title XVIII, § 1801, as added June 13, 1990, D.C. Law 8-136, § 2(g), 37 DCR 2620.)

Prior Codifications. — 1981 Ed., § 43-1651.

Legislative history of Law 8-136. — Law 8-136, the "District of Columbia Water and Sewer Operations Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-269, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on March 27, 1990, and April 10, 1990, respectively. Signed by the Mayor on April 17, 1990, it was assigned Act No. 8-192 and transmitted to both Houses of Congress for its review.

§ 34-2302. Amnesty program.

(a) There is established an amnesty program for any person liable for delinquent water and sanitary sewer services. The amnesty program shall permit the person to pay the full amount of outstanding charges for water and sanitary sewer services, without the imposition of any interest or fine otherwise provided by law.

(b) The amnesty program shall be available during the period from October 1, 1990, through December 31, 1990.

(c) A person may participate in the amnesty program by filing an application for amnesty with the Mayor that includes a copy of the person's most recent water and sanitary sewer service bill and a cashier's check, certified check, or money order in the amount of the bill as computed under subsection (a) of this section. The application for amnesty and the payment shall be filed in person or by mail postmarked no later than midnight on December 31, 1990. Cash payments may not be mailed for purposes of this section.

(d) Any person who files an application for amnesty under this section shall be precluded from filing a request for an administrative hearing pursuant to § 34-2305.

(e) The Mayor shall publicize, for 3 consecutive weeks, the terms and conditions of the amnesty program in at least 2 daily and 2 weekly newspapers published and circulated generally in the District of Columbia.

(f) Revenue received from the amnesty program shall be credited to the General Fund of the District of Columbia as established by § 47-131.

(May 18, 1954, ch. 218, title XVIII, § 1802, as added June 13, 1990, D.C. Law 8-136, § 2(g), 37 DCR 2620.)

Prior Codifications. — 1981 Ed., § 43-1652.

Legislative history of Law 8-136. — For legislative history of D.C. Law 8-136, see Historical and Statutory Notes following § 34-2301.

§ 34-2303. Opportunity for a tenant to receive service in own name; payment made by tenant.

(a) If an owner of rental property or his or her agent is billed directly by the District of Columbia Water and Sewer Authority ("Authority") for water and sanitary sewer services provided to the rental property, and the owner or his or her agent fails to pay a delinquent account for the services, each tenant who resides in the affected property may receive water and sanitary sewer services in his or her own name without liability for the charges accrued while the services were billed directly to the owner of the rental property. A tenant shall receive water and sanitary sewer services in his or her own name only if it is deemed practicable by the Mayor in accordance with rules issued pursuant to § 34-2306.

(b) Any payment made by a tenant of rental property pursuant to subsection (a) of this section shall be deemed in lieu of an equal amount of rent and shall be deducted from any rent due and owing or to become due and owing to the owner, agent, lessor, or manager of the rental property.

(c) Nothing in this section shall prevent the Mayor from pursuing any other appropriate action or remedy at law or equity against an owner, agent, lessor, manager, or tenant of a rental property.

(May 18, 1954, ch. 218, title XVIII, § 1803, as added June 13, 1990, D.C. Law 8-136, § 2(g), 37 DCR 2620; Oct. 21, 2000, D.C. Law 13-183, § 3(a), 47 DCR 7062.)

Prior Codifications. — 1981 Ed., § 43-1653.

Effect of amendments. — D.C. Law 13-183 substituted in subsec. (a) "the District of Columbia Water and Sewer Authority ('Authority')" for "Department of Public Works ('Department')".

Legislative history of Law 8-136. — For legislative history of D.C. Law 8-136, see Historical and Statutory Notes following § 34-2301.

Legislative history of Law 13-183. — Law 13-183, the "Water and Sewer Authority Collection Enhancement Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-484, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on June 26, 2000, and July 11, 2000, respectively. Signed by the Mayor on August 2, 2000, it was assigned Act No. 13-399 and transmitted to both Houses of Congress for its review. D.C. Law 13-183 became effective on October 21, 2000.

§ 34-2304. Appointment of receiver.

(a)(1) Except as otherwise provided in this subsection, upon nonpayment of a delinquent account by the owner, agent, lessor, or manager of a rental property that is billed directly by the Authority for water and sewer services, the Authority or a tenant who resides in the affected rental property may petition the court for the appointment of a receiver for the rental payments in the same manner as for appointment of a receiver pursuant to § 42-3303.

(2) The receiver may take any action deemed necessary or appropriate to collect all rental payments from the tenants of the rental property and shall establish an escrow account with these funds. The receiver shall pay the Authority from the escrow account for services provided on or after the date of the receiver's appointment. If the owner, agent, lessor, or manager also is indebted to an electric company, electricity supplier, gas company, or natural gas supplier for utility services, the receiver may order that rents collected be equitably apportioned between the Authority and the electric company, electricity supplier, gas company, or natural gas supplier. In addition, the receiver may use the rental payments collected to reduce delinquent water and sewer charges owed to the Authority. Upon court order, the receiver shall become trustee of any escrow accounts or other funds established by the tenants or otherwise into which rents or payments for use and occupancy have been made.

(3) The owner, agent, lessor or manager shall be liable for reasonable fees and costs determined by the court to be due the receiver, which may be recovered from the rent payments under control of the receiver, provided that no fees or costs shall be turned over until payment of current District of Columbia Water and Sewer Authority service fees have been made.

(4) The receiver may make reasonable payments to the Authority to reduce delinquent water and sewer charges until all delinquent service fees have been paid, and the receiver shall operate and maintain the structure to the best extent possible with the rents remaining after the payment. The receiver shall have the authority to recommend to the court a payment plan, which shall be binding if ordered by the court, to pay off any remaining delinquencies in service fees. Any monies remaining after the payments pursuant to this subsection shall be turned over to the owner, agent, lessor, or manager unless otherwise ordered by the court.

(b) Any receivership established pursuant to subsection (a) of this section shall be terminated by the court upon a finding that the arrearage which was the subject of the original petition has been satisfied or that the rental property has been sold and the new owner has made satisfactory arrangements to pay the arrearages and has assumed liability for prospective District of Columbia Water and Sewer service fees.

(c) Nothing in this section shall prevent the Mayor, Authority, or a tenant from pursuing any other appropriate action or remedy at law or equity against the owner, agent, lessor, or manager of the rental property.

(d) Any owner, agent, lessor, or manager who collects or attempts to collect a rental payment from a tenant of the rental property subject to an order

appointing a receiver pursuant to this section shall be found to be in contempt of court, after due notice and hearing.

(e) Any person who knowingly fails to pay water and sewer charges to the District of Columbia Water and Sewer Authority, or to make satisfactory arrangements for payment, for more than 12 months shall be guilty of a misdemeanor upon conviction. The penalty for knowingly failing to pay service fees for more than 12 months shall be a fine of not more than $500, or imprisonment not more than 30 days, or both. The penalty for knowingly failing to pay water and sewer charges, or to make satisfactory arrangements for payment, in an amount of more than $10,000 and for more than 2 years shall be a fine of up to 20% of the amount owed, but not less than $5,000, or imprisonment not more than 6 months, or both.

(May 18, 1954, 68 Stat. 101, ch. 218, title XVIII, § 1804, as added June 13, 1990, D.C. Law 8-136, § 2(g), 37 DCR 2620; Nov. 25, 1993, D.C. Law 10-65, § 501(c), 40 DCR 7351; May 16, 1995, D.C. Law 10-255, § 36, 41 DCR 5193; May 9, 2000, D.C. Law 13-107, § 204, 47 DCR 1091; Oct. 21, 2000, D.C. Law 13-183, § 3(b), 47 DCR 7062; Mar. 16, 2005, D.C. Law 15-227, § 19, 51 DCR 10549.)

Prior Codifications. — 1981 Ed., § 43-1654.

Effect of amendments. — D.C. Law 13-107 in subsec. (a)(1) substituted "electric company, electricity supplier or gas company" for "electric or gas company" where appearing.

D.C. Law 13-183 added ", Authority," following "Mayor" in subsec. (c) and rewrote subsecs. (a), (b) and (e).

D.C. Law 15-227, in par. (2) of subsec. (a), substituted "supplier, gas company, or natural gas supplier" for "supplier or gas company".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 9 of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Temporary Act of 2001 (D.C. Law 14-13, July 10, 2001, law notification 48 DCR 6589).

Legislative history of Law 8-136. — For legislative history of D.C. Law 8-136, see Historical and Statutory Notes following § 34-2301.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Legislative history of Law 13-107. — Law 13-107, the "Retail Electric Competition and Consumer Protection Act of 1999," was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

Legislative history of Law 13-183. — For Law 13-183, see notes following § 34-2303.

Legislative history of Law 15-227. — For Law 15-227, see notes following § 34-208.

§ 34-2305. Administrative review.

Any owner or occupant of a property that receives water and sewer services may contest a water or sanitary sewer service bill rendered for water and sewer services in accordance with §§ 2-509 and 2-510, as set forth in rules issued by the Mayor pursuant to § 34-2306. The Mayor or the Authority shall require the owner or occupant to post a surety bond or deposit upon the filing of a request for an administrative hearing, except that the requirement to post

a surety bond or deposit shall not apply to an owner who occupies a single family house. The amount of the surety bond or deposit shall be determined by the Mayor or the Authority and shall not be less than one-half of the total amount of charges, penalties, and interest owed. The surety bond or deposit shall be placed into an escrow account and accrue interest at a rate to be determined by the Mayor or the Authority.

(May 18, 1954, ch. 218, title XVIII, § 1805, as added June 13, 1990, D.C. Law 8-136, § 2(g), 37 DCR 2620; Oct. 21, 2000, D.C. Law 13-183, § 3(c), 47 DCR 7062.)

Section references. — This section is referred to in §§ 34-2107, 34-2202.16, and 34-2302.

Prior Codifications. — 1981 Ed., § 43-1655.

Effect of amendments. — D.C. Law 13-183 added "or the Authority" following "Mayor" in two instances in the second sentence.

Legislative history of Law 8-136. — For legislative history of D.C. Law 8-136, see Historical and Statutory Notes following § 34-2301.

Legislative history of Law 13-183. — For Law 13-183, see notes following § 34-2303.

§ 34-2306. Rules.

(a) Within 60 days of June 13, 1990, the Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this act [D.C. Law 8-136] including rules regarding deposits, meters, liens, the sale and redemption of real property, the amnesty program, receivership, termination of water and sewer services, and administrative review.

(b) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day period, the proposed rules shall be deemed approved.

(c) If after 90 days from June 13, 1990, the Mayor has failed to issue proposed rules to implement the provisions of this act [D.C. Law 8-136] as provided in subsection (a) of this section, the Council may adopt any legislation necessary to accomplish the purposes of this act. [D.C. Law 8-136]

(June 13, 1990, D.C. Law 8-136, § 8, 37 DCR 2620.)

Section references. — This section is referred to in §§ 34-2303 and 34-2305.

Prior Codifications. — 1981 Ed., § 43-1656.

Legislative history of Law 8-136. — For legislative history of D.C. Law 8-136, see Historical and Statutory Notes following § 34-2301.

References in text. — "This act," referred to in (a) and in two places in (c), is D.C. Law 8-136.

CHAPTER 24. WATER SUPPLY, ASSESSMENTS, AND RATES.

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34-2401.01. Mayor to have power to erect water mains, pipes, and fireplugs.
34-2401.02. Operations of Water Department to be under direction of Engineer's Office.
34-2401.03. Water supply; rules and regulations.
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34-2401.05. Payment of rates for water and water service.
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34-2401.08. Department of Environmental Services.
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34-2401.10. Water rents — Refund for erroneous payment.
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34-2401.16. Delivery of water — Nearby Maryland; contract.
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34-2401.19. Acquisition of land and right-of-way for pipelines.
34-2401.20. Unlawful tapping of water pipe; penalty.
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34-2401.22. Penalty for damaging or defacing water pipes.
34-2401.23. Main pipes; laying for use of public buildings.
34-2401.24. Unauthorized opening of mains or pipes.
34-2401.25. Water and water service supplied for the use of the government of the United States.
34-2401.25a. Permitting authority to install meters.
34-2401.26. Contract authority of Mayor regarding costs of Potomac River reservoir; contract payments; appropriations.
34-2401.27. Acquisition of land for Washington Aqueduct.

Subchapter II. Prevention of Water Waste; Water Use by Manufacturers

Sec.
34-2403.01. Prevention of water waste.
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Subchapter III. Water Mains

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34-2405.06. Relevying assessments when assessments declared void.
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34-2407.01. Discontinuance of water service for failure to pay water charges.
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34-2409.01. Levy permitted.
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34-2409.03. Cessation upon introduction of water.
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34-2410.01. Definitions.
34-2410.02. Private fire hydrants.
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34-2411.01. Delivery of water — Falls Church, Virginia, and adjacent areas; in-

Sec.
stallation expenses; payments; revocation of permit.
34-2411.02. Investigation of distribution systems outside District of Columbia.
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Subchapter VII. Repealed Provisions

Sec.
34-2413.01 to 43-2413.11. [Repealed].

Subchapter I. General Provisions.

§ 34-2401.01. Mayor to have power to erect water mains, pipes, and fireplugs.

The Mayor of the District of Columbia shall have the power to lay water mains and water pipes and to erect fireplugs and hydrants wherever the same may be in his judgment necessary for the public safety, comfort, or health.

(R.S., D.C., § 204; June 17, 1890, 26 Stat. 159, ch. 428.)

Cross references. — National capital housing authority, low income housing, acquisition, development and disposition of property, see § 6-101.01.

Permit and excavation fees, sewer, water and gas main, see § 2-136.

Public roads and bridges, jurisdiction in mayor, see § 9-101.02.

Taxation, budget estimates, mayor to include expenses of Water Department in annual estimate, see § 47-212.

Prior Codifications. — 1981 Ed., § 43-1501.

1973 Ed., § 43-1501.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

An assessment for laying water mains is not invalid because it exceeds the actual cost of the work, when such mains become a part on the general water system, and the assessment, under the statute authorizing it, is not only to defray the cost of laying the pipes, but to raise a fund for keeping the system in efficient repair. Parsons v. District of Columbia, 18 S.Ct. 521, 1898 U.S. LEXIS 1528 (U.S.Dist.Col. 1898).

§ 34-2401.02. Operations of Water Department to be under direction of Engineer's Office.

The operations of the Water Department of the District of Columbia shall be under the direction of the Engineer's Office of the District, subject to the control of the Mayor of the District of Columbia.

(July 1, 1882, 22 Stat. 143, ch. 263, § 2.)

Prior Codifications. — 1981 Ed., § 43-1502.

1973 Ed., § 43-1502.

Transfer of Functions. — Reorganization Order No. 28 of the Board of Commissioners, dated April 3, 1953, now redesignated Organization Order No. 147, dated August 19, 1965, established a Department of Sanitary Engineering headed by a Director. The Department performed sanitary engineering services and operations for the District including water distribution, sanitary, storm, and combined sewer systems, sewage treatment, and collection and disposal of waste material. The Office of the Water Registrar and the previously existing Department of Sanitary Engineering (which included the Sewer Division, Water Division, Sanitation Division, and the Sewage Treatment Plant) were abolished and their functions transferred to this Department. The Orders were issued pursuant to Reorganization Plan No. 5 of 1952. Functions of the Department of Sanitary Engineering as set forth in Organization Order No. 147, as amended, were transferred to the Department of Environmental Services by Commissioner's Order No. 71-255, dated July 27, 1971.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2401.03. Water supply; rules and regulations.

Full power is given to the Mayor of the District of Columbia to supply the inhabitants of the District with the Potomac water from the aqueduct mains or pipes laid in the streets and avenues by the United States; and to the Council of the District of Columbia to make all laws and regulations for the proper distribution of the same, subject to the provisions of this chapter, and to the control of the Chief of Engineers, as provided in § 51 [revised; see now 40 U.S.C. § 9502] of Title 40, United States Code. The supply of Potomac water may be extended to points in the District beyond the limits of Washington upon like terms and conditions as are provided by law for the supply of the same in that city.

(R.S., D.C., § 195; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3; June 10, 1879, 21 Stat. 9, ch. 16; Feb. 25, 1885, 23 Stat. 319, ch. 145; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

Cross references. — Mayor, council and other officers, police power regulations, see § 1-303.03.

Procurement, generally, see § 2-301.01 et seq.

Prior Codifications. — 1981 Ed., § 43-1503.

1973 Ed., § 43-1503.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(323) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

An assessment for laying water mains is not invalid because it exceeds the actual cost of the work, when such mains become a part on the general water system, and the assessment, under the statute authorizing it, is not only to defray the cost of laying the pipes, but to raise a fund for keeping the system in efficient repair. Parsons v. District of Columbia, 18 S.Ct. 521, 1898 U.S. LEXIS 1528 (U.S.Dist.Col. 1898).

§ 34-2401.04. Fiscal year of Water Department.

The fiscal year of the Water Department of the District of Columbia shall conform to the regular fiscal year of the general government; the rates shall be levied and collected at least once every 12 months, or whenever practicable in the judgment of the Council of the District of Columbia, at least once every 6 months.

(July 1, 1882, 22 Stat. 144, ch. 263, § 2; May 18, 1954, 68 Stat. 103, ch. 218, § 107.)

Prior Codifications. — 1981 Ed., § 43-1504.

1973 Ed., § 43-1504.

Transfer of Functions. — Reorganization Order No. 28 of the Board of Commissioners, dated April 3, 1953, now redesignated Organization Order No. 147, dated August 19, 1965, established a Department of Sanitary Engineering headed by a Director. The Department performed sanitary engineering services and operations for the District including water distribution, sanitary, storm, and combined sewer systems, sewage treatment, and collection and disposal of waste material. The Office of the Water Registrar and the previously existing Department of Sanitary Engineering (which included the Sewer Division, Water Division, Sanitation Division, and the Sewage Treatment Plant) were abolished and their functions transferred to this Department. The Orders were issued pursuant to Reorganization Plan No. 5 of 1952. Functions of the Department of Sanitary Engineering as set forth in Organization Order No. 147, as amended, were transferred to the Department of Environmental Services by Commissioner's Order. No. 71-255, dated July 27, 1971.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(323) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2401.05. Payment of rates for water and water service.

All rates for water and water service hereby established shall be payable at least once semiannually. When the computation of the amount of any bill for any of such services results in a fraction of one-half cent or more, the next highest amount not containing a fraction shall be charged.

(Oct. 21, 1975, D.C. Law 1-23, title VII, § 701(c), 22 DCR 2115.)

Prior Codifications. — 1981 Ed., § 43-1505.

1973 Ed., § 43-1504a.

Legislative history of Law 1-23. — Law 1-23 was introduced in Council and assigned Bill No. 1-47, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first, and second readings, and reconsideration of second reading, on April 15, 1975, June 1, 1975, June 24, 1975 and July 11, 1975, respectively. Signed by the Mayor on July 23, 1975, it was assigned Act No. 1-34 and transmitted to both Houses of Congress for its review.

§ 34-2401.06. Change of ownership or occupancy; statement of account.

(a) Any person who desires a statement of the account of any water and sanitary sewer service charge to the date of the acquisition of any real property shall make a written request to the Department of Public Works ("Department") on or before the date of the acquisition, except that the Mayor may enforce payment of water and sewer service charges by shutting off the water supply or refusing to restore the water supply without regard to a change of ownership or occupancy of any real property. The Department shall issue a statement of the account within 30 days after receipt of the request for a statement of the account.

(b) The Mayor, with prior written notice to the owner of the date and time of entry, and consistent with constitutional guidelines, may enter any building, establishment, or other premises furnished water or sanitary sewer service. If the Mayor is unable to gain entry to the real property after 2 attempts, the Mayor shall notify the owner or occupant to contact the Department within 3 business days after notice is mailed to the owner. If the owner or occupant fails to contact the Department, it shall be presumed that the owner or occupant refuses to permit entry to the property and the Mayor may impose a penalty of $100 and shut off the water supply to the real property. Upon the payment of the penalty or issuance of a final decision where the owner files a request for administrative review, the Mayor shall restore the water supply.

(Oct. 21, 1975, D.C. Law 1-23, title VII, § 703, 22 DCR 2116; June 13, 1990, D.C. Law 8-136, § 3, 37 DCR 2620.)

Prior Codifications. — 1981 Ed., § 43-1506.

1973 Ed., § 43-1504b.

Legislative history of Law 1-23. — For legislative history of D.C. Law 1-23, see Historical and Statutory Notes following § 34-2401.05.

Legislative history of Law 8-136. — For legislative history of D.C. Law 8-136, see Historical and Statutory Notes following § 34-2301.

§ 34-2401.07. Water main taxes and rents to be uniform.

Water main taxes and water rents shall be uniform in said District.

(June 10, 1879, 21 Stat. 9, ch. 16.)

Prior Codifications. — 1981 Ed., § 43-1507. 1973 Ed., § 43-1505.

§ 34-2401.08. Department of Environmental Services.

The Department of Environmental Services shall perform such duties connected with the Water Department of the District as may be proper and necessary, under the direction of the Mayor of the District of Columbia. He shall give bonds for the faithful performance of his duty in the sum of $10,000.

(Leg. Assem., Aug. 23, 1871, ch. 108, § 16; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

Prior Codifications. — 1981 Ed., § 43-1508.

1973 Ed., § 43-1506.

Transfer of Functions. — Office of Water Registrar abolished: Reorganization Order No. 28 of the Board of Commissioners, dated April 3, 1953, now redesignated Organization Order No. 147, dated August 19, 1965, established a Department of Sanitary Engineering headed by a Director. The Department performed sanitary engineering services and operations for the District including water distribution, sanitary, storm, and combined sewer systems, sewage treatment, and collection and disposal of waste material. The Office of the Water Registrar and the previously existing Department of Sanitary Engineering (which included the Sewer Division, Water Division, Sanitation Division, and the Sewage Treatment Plant) were abolished and their functions transferred to this Department. The Orders were issued pursuant to Reorganization Plan No. 5 of 1952. Functions of the Department of Sanitary Engineering as set forth in Organization Order No. 147, as amended, were transferred to the Department of Environmental Services by Commissioner's Order No. 71-255, dated July 27, 1971.

The functions of the Department of Environmental Services were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2401.09. Refund of overpaid assessments.

In all cases where a water main has heretofore been or may hereafter be laid in a public street or way, and in order to secure the laying of such main the cost or a part thereof has been paid to the District of Columbia prior to the laying of said main by any person or corporation, there shall be repaid from time to time to such person or corporation, out of the collections from the assessment for such main, all of the amounts so paid over and above the assessment chargeable against the land owned or controlled by said person or corporation.

(June 2, 1900, 31 Stat. 252, ch. 612, § 2.)

Prior Codifications. — 1981 Ed., § 43-1520. 1973 Ed., § 43-1518.

§ 34-2401.10. Water rents — Refund for erroneous payment.

The Mayor of the District of Columbia is hereby authorized to cause all water rents erroneously paid after March 3, 1905, in the District of Columbia to be refunded in the manner prescribed by law for the refunding of erroneously paid taxes; provided, that application for refund shall be made within 2 years after such erroneous payment. And after March 3, 1905, the said Mayor is authorized to cause to be refunded in the same manner and subject to the same limitations all money paid for water for any special purpose where the project is abandoned and the water not used, and for tapping water mains and for furnishing stopcock where the service is not rendered and the material is not furnished; and all money refunded under this section shall be paid from and charged to the water fund.

(Mar. 3, 1905, 33 Stat. 912, ch. 1406.)

Prior Codifications. — 1981 Ed., § 43-1521.

1973 Ed., § 43-1519.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

Commissioners and water registrar, in requiring purchaser of property to pay for water used by former occupants of purchased property, were acting within scope of their official duties, and even though they made a mistake in exercise of judgment or acted on erroneous construction of the law, they could not be held personally liable to purchaser. D.C. Code 1940, §§ 43-1503, 43-1519 to 43-1522. Farrell v. Ward, 53 A.2d 46, 1947 D.C. App. LEXIS 141 (Cr.App. 1947).

Where one who had been wrongfully compelled to pay water bill of another brought action to recover back the sum paid against commissioners, water registrar and collector of taxes, individually and officially, without naming District of Columbia as a party defendant, no judgment could be entered against the District. D.C. Code 1940, §§ 1-102, 43-1503, 43-1519 to 43-1522. Farrell v. Ward, 53 A.2d 46, 1947 D.C. App. LEXIS 141 (Cr.App. 1947).

A tenant who was seeking reimbursement for water bill which accrued during a prior tenancy stood in the shoes of a creditor and could not recover more than was actually due by prior tenant. D.C. Code 1940, § 43-1521. Simmons v. Quick, 37 A.2d 656, 1944 D.C. App. LEXIS 174 (Cr.App. 1944).

§ 34-2401.11. Mayor to have authority to collect water rates in advance.

The Mayor of the District of Columbia has authority to provide for the collection of water rates, in advance or otherwise, from the owner or occupants of all buildings or establishments using the water; and to provide for stopping

the supply of water to any dwelling or establishment upon a failure to pay the rate, and to carry into full effect the provisions of this chapter.

(R.S., D.C., § 197; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

Prior Codifications. — 1981 Ed., § 43-1526.

1973 Ed., § 43-1521.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

In general.
Liability of collectors.
Recovery from previous tenant.
Stopping supply of water.

In general.

"Water rents" as used in commercial lease under which tenant operated its laundromat business, referred to actual water consumption, and tenant was not required instead to pay additional costs pursuant to services and utilities provision of lease, even though section in which "water rents" term appeared was captioned "taxes and assessments"; under statutory law in effect at time lease was executed, which formed a part of the lease, "water rents" referred to actual consumption. Double H Hous. Corp. v. Big Wash, Inc., 799 A.2d 1195, 2002 D.C. App. LEXIS 298 (2002).

While drafter may have made an obvious error in including "water rents" provision in commercial lease under which tenant operated its laundromat business, that fact did not enable the Court of Appeals or any other court to alter lease's plain language that tenant was required to pay for only its actual water consumption, and not an additional sum for its proportionate share of taxes and assessments. Double H Hous. Corp. v. Big Wash, Inc., 799 A.2d 1195, 2002 D.C. App. LEXIS 298 (2002).

District of Columbia officials acted within their authority in refusing to turn water on for new principal tenant of premises whether owners of premises had not, for many years, paid, or secured to be paid, water rents, and having voluntarily paid such arrearages in order to secure water supply, tenant could not recover from such officials the amount paid by him and damages claimed to have resulted from alleged conspiracy to illegally force him to pay such amount. D.C. Code, 1940, § 43-1521. Quick v. District of Columbia, 90 A.2d 235, 1952 D.C. App. LEXIS 186 (Cr.App. 1952).

One purchasing property within District of Columbia without notifying Water Registrar may be compelled to pay full current water rates for property. D.C. Code 1940, § 43-1521. Urciolo v. District of Columbia, 82 A.2d 909, 1951 D.C. App. LEXIS 198 (Cr.App. 1951).

Where plaintiff was highest bidder at a foreclosure sale of realty under a deed of trust, plaintiff became owner as of date of sale and not as of date of delivery of deed for purposes of determining when plaintiff should give notice to Water Registrar of District of Columbia of purchase of such property. D.C. Code 1940, § 43-1521. Urciolo v. District of Columbia, 82 A.2d 909, 1951 D.C. App. LEXIS 198 (Cr.App. 1951).

Water rents do not constitute a lien on property supplied unless it is so provided by statute in express terms or by necessary implication. Farrell v. Ward, 53 A.2d 46, 1947 D.C. App. LEXIS 141 (Cr.App. 1947).

Where one who had been wrongfully compelled to pay water bill of another brought action to recover back the sum paid against commissioners, water registrar and collector of taxes, individually and officially, without naming District of Columbia as a party defendant, no judgment could be entered against the District. D.C. Code 1940, §§ 1-102, 43-1503, 43-1519 to 43-1522. Farrell v. Ward, 53 A.2d 46, 1947 D.C. App. LEXIS 141 (Cr.App. 1947).

Liability of collectors.

Commissioners and water registrar, in requiring purchaser of property to pay for water

used by former occupants of purchased property, were acting within scope of their official duties, and even though they made a mistake in exercise of judgment or acted on erroneous construction of the law, they could not be held personally liable to purchaser. D.C. Code 1940, §§ 43-1503, 43-1519 to 43-1522. Farrell v. Ward, 53 A.2d 46, 1947 D.C. App. LEXIS 141 (Cr.App. 1947).

Where record showed that protest made upon payment of water bill was handed to water registrar with request that he show protest to commissioners, and there was no showing that collector of taxes took any part in the controversy or committed any of the acts which compelled the payment or that he had any notice that bill was being paid under protest no personal liability rested on collector upon showing that the collection was erroneously made. D.C. Code, 1940, §§ 43-1503, 43-1519 to 43-1552. Farrell v. Ward, 53 A.2d 46, 1947 D.C. App. LEXIS 141 (Cr.App. 1947).

Recovery from previous tenant.

A purchaser of property could not be compelled to pay for water used by former occupants of purchased property either by statutes regulating water system or regulations issued by commissioners pursuant thereto. D.C. Code 1940, §§ 43-1503, 43-1519 to 43-1522. Farrell v. Ward, 53 A.2d 46, 1947 D.C. App. LEXIS 141 (Cr.App. 1947).

Where tenant was compelled to pay water bill which accrued during a prior tenancy, and thereafter sought reimbursement from prior tenant, water bill prepared by official charged with duty of keeping records and collecting charges for water services was admissible under statute providing for conduct of trial in small claims and conciliation branch of municipal court so as to do substantial justice, and made a prima facie case. D.C. Code 1940, §§ 11-808(b), 43-1521. Simmons v. Quick, 37 A.2d 656, 1944 D.C. App. LEXIS 174 (Cr.App. 1944).

A tenant who failed to give written notice of acquiring control of premises within five days thereof as required by statute and order issued by Commissioners of District of Columbia, and who was thereafter required to pay water bill which accrued during a prior tenancy upon municipal authorities' threatening suspension of water service, was not a mere "volunteer", so as to preclude recovery from prior tenant. D.C. Code 1940, § 43-1521. Simmons v. Quick, 37 A.2d 656, 1944 D.C. App. LEXIS 174 (Cr.App. 1944).

Fact that a tenant, by failing to give written notice of acquiring control of premises within five days thereof as required by statute and order issued by Commissioners of District of Columbia became secondarily liable for water bill which accrued during a prior tenancy, did not relieve prior tenant of his primary liability. D.C. Code 1940, § 43-1521. Simmons v. Quick, 37 A.2d 656, 1944 D.C. App. LEXIS 174 (Cr.App. 1944).

A tenant, who became secondarily liable for water bill which accrued during prior tenancy by his failure to give written notice of acquiring control of premises within five days thereof as required by statute and order issued by Commissioners of District of Columbia, was entitled to pay accrued water rent without submitting to the cutting off of his water supply, and could look to prior tenant for indemnity regardless of prior tenant's lack of consent notwithstanding his protest. D.C. Code § 1940, § 43-1521. Simmons v. Quick, 37 A.2d 656, 1944 D.C. App. LEXIS 174 (Cr.App. 1944).

A tenant who was seeking reimbursement for water bill which accrued during a prior tenancy stood in the shoes of a creditor and could not recover more than was actually due by prior tenant. D.C. Code 1940, § 43-1521. Simmons v. Quick, 37 A.2d 656, 1944 D.C. App. LEXIS 174 (Cr.App. 1944).

Stopping supply of water.

In absence of statute expressly authorizing it, or making arrearages for water rents a lien on property, a water company or municipal corporation has no right to cut off the water supply to the premises until the arrears due from a former owner or occupant are paid. Farrell v. Ward, 53 A.2d 46, 1947 D.C. App. LEXIS 141 (Cr.App. 1947).

§ 34-2401.12. Water rates not to be a source of revenue.

The water rates levied in the District of Columbia shall never be a source of revenue other than as a means of keeping up to said District a supply of water but shall constitute a fund exclusively for the maintenance, management, and repair of the system of water distribution.

(R.S., D.C., § 198; July 12, 1876, 19 Stat. 87, ch. 180, § 18; Feb. 25, 1885, 23 Stat. 319, ch. 145.)

Prior Codifications. — 1981 Ed., § 43-1531.
1973 Ed., § 43-1522.

CASE NOTES

In general.

Circumstance that District was not permitted by Code to make profit on water sold would not convert function of selling water into purely governmental one, such as providing police force for protection of all, and District of Columbia could be held liable for negligent operation of motor vehicle by employee of district government in connection with installation of water mains. D.C. Code 1951, § 43-1522. Scull v. District of Columbia, 250 F.2d 767, 1957 U.S. App. LEXIS 4203 (C.A.D.C. 1957).

§ 34-2401.13. Payment of water tax into General Fund. [Repealed].

Repealed.

(R.S., D.C., § 203; Jan. 22, 1976, D.C. Law 1-42, § 3(d), 22 DCR 6313; July 23, 1992, D.C. Law 9-134, § 112(g), 39 DCR 4066; Sept. 10, 1992, D.C. Law 9-145, § 113(d), 39 DCR 4895; Sept. 10, 1992, D.C. Law 9-145, § 113(d), 39 DCR 4895.)

Prior Codifications. — 1981 Ed., § 43-1532.
1973 Ed., § 43-1523.

Legislative history of Law 9-134. — For legislative history of D.C. Law 9-134, see Historical and Statutory Notes following § 34-2413.08.

Legislative history of Law 9-145. — For legislative history of D.C. Law 9-145, see Historical and Statutory Notes following § 34-2413.08.

§ 34-2401.14. Payment of water rents from Washington Aqueduct into General Fund.

All water rents derived from the Washington Aqueduct shall be paid into the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975 [D.C. Law 1-42].

(R.S., D.C., § 217; Jan. 22, 1976, D.C. Law 1-42, § 3(e), 22 DCR 6313.)

Prior Codifications. — 1981 Ed., § 43-1533.
1973 Ed., § 43-1524.

Legislative history of Law 1-42. — For legislative history of D.C. Law 1-42, see Historical and Statutory Notes following § 34-2401.13.

§ 34-2401.15. Water not to be diverted beyond District.

Except as provided in §§ 34-2401.16 and 34-2401.17 no portion of the water conveyed or to be conveyed through or by means of the Washington Aqueduct, or any appurtenance thereof, shall be diverted to the supply or use of any building, premises or establishment located outside of the limits of the District of Columbia.

(Mar. 3, 1893, 27 Stat. 544, ch. 199.)

Prior Codifications. — 1981 Ed., § 43-1538. 1973 Ed., § 43-1529.

§ 34-2401.16. Delivery of water — Nearby Maryland; contract.

For the protection of the health of the residents of the District of Columbia and the employees of the United States government residing in Maryland near the District of Columbia boundary, the Mayor of the District of Columbia, upon the request of the Washington Suburban Sanitary Commission, a body corporate, established by Chapter 313 of the Acts of 1916 of the State of Maryland, or upon the request of its legally appointed successor, is authorized to deliver water from the water supply system of the District of Columbia to said Washington Suburban Sanitary Commission or its successor for distribution to territory in Maryland within the Washington Suburban Sanitary District as designated in the aforesaid act, or any amendment thereto, and to connect District of Columbia water mains with water mains in the state of Maryland at such points at or near the District of Columbia line as may be agreed upon from time to time by the Mayor of the District of Columbia and the Washington Suburban Sanitary Commission, under the conditions hereinafter named, namely:

(1) That before such connections shall be made the said Washington Suburban Sanitary Commission or its legally appointed successor shall secure authority from the legislature of the State of Maryland to enter into an agreement with the said Mayor of the District of Columbia outlining the conditions under which the service is to be rendered.

(2) The agreement between the Mayor of the District of Columbia and the said Washington Suburban Sanitary Commission or its legally appointed successor shall provide, among other things:

(A) That the meters on each of said connections shall be located within the District of Columbia and shall remain under the jurisdiction of the Mayor of the District of Columbia;

(B) The rates at which water will be furnished, said rates to be based on the actual cost to the United States and the District of Columbia of delivering water to the points designated above, including an interest charge at 4% per annum and the cost of any payment required by § 113 of the Omnibus Budget Support Act of 1992 [D.C. Law 9-145] and a suitable allowance for depreciation;

(C) That payments for water so furnished shall be made through the Collector of Taxes of the District of Columbia at such times as the Mayor of the District of Columbia may direct, said payments to be deposited in the Treasury of the United States as other water rents collected in the District of Columbia are deposited;

(D) That at no time shall the amount of water furnished the said Washington Suburban Sanitary Commission or its successor exceed the amount that can be spared without jeopardizing the interests of the United States or of the District of Columbia;

(E) That the Mayor of the District of Columbia shall have at all times the right to investigate the distribution system in Maryland, and if, in his

opinion, there is a wastage of water he shall have the right to curtail the supply to said sanitary district to the amount of such wastage.

(Mar. 3, 1917, 39 Stat. 1043, ch. 160; June 30, 1930, 46 Stat. 838, ch. 764; Apr. 14, 1932, 47 Stat. 79, ch. 100; July 23, 1992, D.C. Law 9-134, § 112(f), 39 DCR 4066; Sept. 10, 1992, D.C. Law 9-145, § 113(c), 39 DCR 4895.)

Section references. — This section is referred to in § 34-2401.15.

Prior Codifications. — 1981 Ed., § 43-1539.

1973 Ed., § 43-1530.

Legislative history of Law 9-134. — For legislative history of D.C. Law 9-134, see Historical and Statutory Notes following § 34-2413.08.

Legislative history of Law 9-145. — For legislative history of D.C. Law 9-145, see Historical and Statutory Notes following § 34-2413.08.

References in text. — The "Omnibus Budget Support Act of 1992," referred to in (2)(B), is D.C. Law 9-145.

Editor's notes. — Restriction on use of funds: Section 136 of Pub. L. 102-382, 106 Stat. 1435, the District of Columbia Appropriations Act, 1993, provided that none of the funds made available in this Act may be used by the District of Columbia to impose, implement, collect, administer, transfer, or enforce a payment in lieu of taxes on the Water and Sewer Utility Administration that would increase payments required of suburban jurisdictions in Maryland or Virginia under the Blue Plains Intermunicipal Agreement of 1985.

Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-2.9711), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2401.17. Delivery of water — Arlington County, Virginia.

The Secretary of the Army is hereby authorized, in his discretion and subject

to the approval of the Chief of Engineers, upon the request of the board of supervisors of Arlington County, Virginia, to permit the delivery of water from the federal water supply pumping station at the Dalecarlia Reservoir to the Arlington County sanitary district, created by an act of the General Assembly of the State of Virginia, of March 15, 1922, and to connect the force main of said pumping station with the water main in Arlington County at the southerly end of the Chain Bridge; provided, that all expenses of installing said connection and its appurtenances and any subsequent changes therein shall be borne by said Arlington County, which shall pay such charges for the use of such water as may be determined from time to time in advance by the Secretary of the Army, the payments to be made at such time and under such regulations as the Secretary of the Army may prescribe, all payments for the use of water to be deposited in the Treasury of the United States as other water rents collected in the District of Columbia are deposited; and provided further, that the Secretary of the Army may revoke at any time any permit for the use of said water that may have been granted.

(Apr. 14, 1926, 44 Stat. 251, ch. 140, § 1.)

Section references. — This section is referred to in § 34-2401.15.

Prior Codifications. — 1981 Ed., § 43-1540.

1973 Ed., § 43-1531.

Editor's notes. — Restriction on use of funds: Section 136 of Pub. L. 102-382, 106 Stat. 1435, the District of Columbia Appropriations Act, 1993, provided that none of the funds made available in this Act may be used by the District of Columbia to impose, implement, collect, administer, transfer, or enforce a payment in lieu of taxes on the Water and Sewer Utility Administration that would increase payments required of suburban jurisdictions in Maryland or Virginia under the Blue Plains Intermunicipal Agreement of 1985.

§ 34-2401.18. "Mayor," "District of Columbia water system" defined.

As used in § 34-2401.17, unless the context otherwise requires:

(1) "Mayor" means the Mayor of the District of Columbia.

(2) "District of Columbia water system" or "water system" means any and all of the facilities used or to be used for the supply of raw or partly purified water wherever situated and all of the facilities used or to be used for the distribution of purified water situated within the District of Columbia which are operated by the Department of Environmental Services or the Washington Aqueduct Division of the Washington District of the Corps of Engineers, Department of the Army, or both.

(June 2, 1950, 64 Stat. 195, ch. 218, § 1.)

Prior Codifications. — 1981 Ed., § 43-1551.

1973 Ed., § 43-1539.

References in text. — Section 43-1540, referred to in the introductory language of this section, was repealed by the Act of December 24, 1974, 87 Stat. 832, Pub. L. 93-198, § 243(b).

Transfer of Functions. — The functions of the Department of Environmental Services were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2401.19. Acquisition of land and right-of-way for pipelines.

The Secretary of the Army is hereby authorized to acquire by purchase or condemnation all necessary lands, easements, and rights-of-way for pipelines within the District of Columbia to connect the force main of said pumping station with the water main in Arlington County as herein authorized.

(Apr. 14, 1926, 44 Stat. 252, ch. 140, § 2.)

Prior Codifications. — 1981 Ed., § 43-1544. 1973 Ed., § 43-1532.

§ 34-2401.20. Unlawful tapping of water pipe; penalty.

The unlawful tapping of any water pipe laid down in the District by authority of the United States is a misdemeanor and an indictable offense; and any person convicted of such offense in the criminal court of the District shall be subject to a fine not exceeding $500, or to imprisonment for a term not exceeding 1 year.

(R.S., D.C., § 218.)

Section references. — This section is referred to in § 34-2401.21. 1973 Ed., § 43-1534.

Prior Codifications. — 1981 Ed., § 43-1546.

§ 34-2401.21. Notification of violations.

It is the special duty of the Chief of Engineers to bring to the notice of the United States Attorney for the District of Columbia, or to the grand jury, any infraction of § 34-2401.20.

(R.S., D.C., § 219.)

Prior Codifications. — 1981 Ed., § 43-1547. 1973 Ed., § 43-1535.

§ 34-2401.22. Penalty for damaging or defacing water pipes.

Every person who maliciously breaks, injures, defaces, or destroys any main or pipe, bend, branch, valve, hydrant, service pipe, or any other fixture used for

the distribution of water throughout the streets and avenues, or for its introduction into the houses, tenements, or buildings of the District of Columbia, shall be punishable by imprisonment in the District jail for not more than 2 years.

(R.S., D.C., § 220; Feb. 25, 1885, 23 Stat. 319, ch. 145.)

Prior Codifications. — 1981 Ed., § 43-1548. 1973 Ed., § 43-1536.

§ 34-2401.23. Main pipes; laying for use of public buildings.

No greater number of main pipes of the Washington Aqueduct shall be laid at the expense of the United States than are sufficient to furnish the public buildings, offices, and grounds with the necessary supply of water. The cost of any main pipe, for the supply of water to the inhabitants of Washington, must be paid by the District of Columbia, in the manner provided by law.

(R.S., U.S., § 1805; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

Prior Codifications. — 1981 Ed., § 43-1549. 1973 Ed., § 43-1537.

§ 34-2401.24. Unauthorized opening of mains or pipes.

No person, unless by consent of the Chief of Engineers, shall tap or open the mains or pipes laid or hereafter to be laid by the United States, under a penalty of not less than $50 nor more than $500.

(R.S., U.S., § 1803; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3.)

Prior Codifications. — 1981 Ed., § 43-1550. 1973 Ed., § 43-1538.

§ 34-2401.25. Water and water service supplied for the use of the government of the United States.

(a) All water and water services furnished from the District water supply system through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, situated in the District, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at the rates for the furnishing and readiness to furnish water applicable to other water consumers in the District. All water and water services furnished from the District water supply system through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, situated outside the District in the States of Maryland or Virginia, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at rates comparable to those which may be in effect and charged to state, municipal, or county

agencies or other political authorities or jurisdictions within the respective states wherein said federal facilities may be situated for similar water service from the District water supply system; provided, that conditions as to water pressure, quantity, rates of demand, and points of connection available or permissible at any time for service outside the District, if any, shall be fixed by the Mayor of the District of Columbia so as to fully protect the prior interests of water consumers within the District; provided further, that as a condition of service, at each point of federal connection to the water system of the District for service outside the District there shall be installed and maintained at the expense of the department, independent establishment, or agency of the United States which is to use water therefrom a suitable meter or meters and incidental vaults, valves, piping and recording devices, and such other equipment as the Mayor in his discretion deems necessary to control and record the use of water through each such connection. As an additional condition of service, the department, agency, or establishment which is responsible for the maintenance of any such meter shall provide the Mayor (acting through the District of Columbia Water and Sewer Authority) with such access to the meter as the Mayor may require to measure the actual usage of the department, agency, or establishment (including any entity under the jurisdiction of the department, agency, or establishment) for purposes of making the adjustments to annual estimates required under § 34-2401.25a(1). of Payment shall be made as provided in subsection (b) of this section.

(b)(1) Beginning in the second quarter of fiscal year 1990, the government of the District of Columbia shall receive payment for water services from funds appropriated or otherwise available to the Federal departments, independent establishments, or agencies. In accordance with the provisions of paragraphs (2) and (3) of this subsection, one-fourth (25 percent) of the annual estimate prepared by the District government shall be paid, not later than the second day of each fiscal quarter, to the District government by the Secretary of the Treasury from funds deposited by said departments, establishments, or agencies in a United States Treasury account entitled "Federal Payment for Water and Sewer Services". In the absence of sufficient funds in said account, payment shall be made by the Secretary of the Treasury from funds available to the respective user agencies. Payments shall be made to the District government by the Secretary of the Treasury without further justification, and shall be equal to one-fourth (25 percent) of the annual estimate prepared by the District government pursuant to paragraph (2) of this subsection.

(2) By April 15 of each calendar year the District shall provide the Office of Management and Budget, the Secretary of the Treasury, and the head of each of the respective Federal departments, independent establishments, and agencies, for inclusion in the President's budget of the respective Federal departments, independent establishments, or agencies, an estimate of the cost of service for the fiscal year commencing October 1st of the following calendar year. The estimate shall provide the total estimated annual cost of such service and an itemized estimate of such costs by Federal department, independent establishment, or agency. The District's estimates on a yearly basis shall reflect such adjustments as are necessary to

(A) account for actual usage variances from the estimated amounts for the fiscal year ending on September 30th of the calendar year preceding April 15th, and

(B) reflect changes in rates charged for water and sewer services resulting from public laws or rate covenants pursuant to water and sewer revenue bond sales.

(3) Each Federal department, independent establishment, or agency receiving water services in buildings, establishments, or other places shall pay from funds specifically appropriated or otherwise available to it, quarterly and on the first day of each such fiscal quarter, to an account in the United States Treasury entitled "Federal Payment for Water and Sewer Services" an amount equal to one-fourth (25 percent) of the annual estimate for said services as provided for in paragraph (2) of this subsection.

(4) The amount or time period for late payment of water charges involving a building, establishment, or other place owned by the Government of the United States imposed by the District of Columbia shall not be different from those imposed by the District of Columbia on its most favored customer.

(5) Repealed.

(c) Nothing in this section may be construed to require the District of Columbia to seek payment for water services directly from any Federal entity which is under the jurisdiction of a department, independent establishment, or agency which is required to make a payment for such services under this section, or to allocate any amounts charged for such services among the entities which are under the jurisdiction of any such department, independent establishment, or agency. Each Federal department, independent establishment, and agency receiving water from the District of Columbia shall be responsible for allocating billings for such services among entities under the jurisdiction of the department, establishment, or agency, and shall be responsible for collecting amounts from such entities for any payments made to the District of Columbia under this section.

(d) In the case of water services provided to a department, independent establishment, or agency in Virginia through the Federally owned water main system, if the total of the metered amounts billed for all individual users of the system (as measured by the meters for each individual user) is less than the total amount as measured by the meters at the delivery points into the system at the Francis Scott Key Bridge, the District government shall collect, and the Secretary of Defense shall pay, the difference to the District government in accordance with the requirements for collecting and making payments under this section.

(May 18, 1954, 68 Stat. 102, ch. 218, title I, § 106; Sept. 30, 1966, 80 Stat. 857, Pub. L. 89-610, title V, § 503; Oct. 6, 1977, 91 Stat. 1093, Pub. L. 95-122, § 1(1); Nov. 21, 1989, 103 Stat. 1280, Pub. L. 101-168, § 133(b); Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1(a)(4), H.R. 5666, Div. A., Ch. 4, § 401(a); Dec. 21, 2001, 115 Stat. 942 to 944, Pub. L. 107-96, par. 52(a)(2), (b)(1), (c)(2); Oct. 18, 2004, 118 Stat. 1348, Pub. L. 108-335, § 337(a).)

Section references. — This section is referred to in §§ 34-2401.25a and 47-131.

Prior Codifications. — 1981 Ed., § 43-1552.

1973 Ed., § 43-1541.

Effect of amendments. — Pub. L. 107-96, in subsec. (a), inserted the second to the last sentence relating to access to meters; in subsec. (b), par. (2), inserted "the Secretary of the Treasury, and the head of each of the respective Federal departments, independent establishments, and agencies,"; added subsec. (c) relating to payment for sanitary sewer services; and added subsec. (d) relating to water services.

Pub. L. 108-335, in subsec. (b), repealed par. (5) which had read as follows: "(5) Not later than the 15th day of the month following each quarter (beginning with the first quarter of fiscal year 2001), the inspector general of each Federal department, establishment, or agency receiving water services from the District of Columbia shall submit a report to the Committees on Appropriations of the House of Representatives and Senate analyzing the promptness of payment with respect to the services furnished to such department, establishment, or agency."

Effective date. — Pub. L. 107-96, 115 Stat. 944, the District of Columbia Appropriations Act, 2002, provided in part:

"This section and the amendments made by this section shall apply with respect to fiscal year 2002 and each succeeding fiscal year."

Section 337(c) of Pub. L. 108-335 provided: "(c) The amendments made by this section shall apply with respect to quarters occurring during fiscal year 2005 and each succeeding fiscal year."

Editor's notes. — Apportionment of appropriations: Section 133 of Pub. L. 101-518, 104 Stat. 2237, the District of Columbia Appropriations Act, 1991, amended section 133(e) of the District of Columbia Appropriations Act, 1990, as amended, by striking "December 31, 1990" and inserting "December 31, 1991."

Section 129 of Pub. L. 102-111, 105 Stat. 570, the District of Columbia Appropriations Act, 1992, amended section 133(e) of the District of Columbia Appropriations Act, 1990, as amended, by striking "December 31, 1991" and inserting "December 31, 1992."

Section 130 of Pub. L. 102-382, 106 Stat. 1434, the District of Columbia Appropriations Act, 1993, amended section 133(e) of the District of Columbia Appropriations Act, 1990, as amended, by striking "December 31, 1992" and inserting "December 31, 1993."

Public Law 102-382, 106 Stat. 1429, the District of Columbia Appropriations Act, 1993, provided for the Water and Sewer Enterprise Fund, $251,630,000, of which $39,602,000 shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects.

Section 134 of § 1(c) of Pub. L. 100-202, the District of Columbia Appropriations Act, 1988, provided that none of the funds available to the District of Columbia government shall be used for any purpose involved in billing individual agencies or establishments for water and water services and sanitary sewer services traditionally funded under the account "Federal Payment for Water and Sewer Services" unless and until existing statutes (sections 106 and 212 of the District of Columbia Public Works Act of 1954, as amended, Public Law 364, approved May 18, 1954) are amended to specifically provide for such billing.

Section 128 of Pub. L. 103-127, 107 Stat. 1347, the District of Columbia Appropriations Act, 1994, amended section 133(e) of the District of Columbia Appropriations Act, 1990, as amended, by substituting "December 31, 1994" for "December 31,

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2401.25a. Permitting authority to install meters.

If a department, independent establishment, or agency of the United States which uses water and water services from the District of Columbia water supply system has not installed a suitable meter at each point of Federal connection to the system to control and record the use of water through each

such connection (as required under § 34-2401.25(a)) as of the expiration of the 60-day period which begins on December 21, 2001:

(1) The District of Columbia Water and Sewer Authority shall install such a meter or meters (and incidental vaults, valves, piping and recording devices, and such other equipment as the Authority deems necessary) not later than 60 days after the expiration of such period; and

(2) The department, independent establishment, or agency shall pay the Authority promptly (but in no case later than 30 days after the Authority submits a bill) for the costs incurred in installing the meter and equipment.

(Dec. 21, 2001, 115 Stat. 943, Pub. L. 107-96, par. (52)(b)(2).)

Effective date. — Pub. L. 107-96, 115 Stat. 944, the District of Columbia Appropriations Act, 2002, provided in part:

"This section and the amendments made by this section shall apply with respect to fiscal year 2002 and each succeeding fiscal year."

§ 34-2401.26. Contract authority of Mayor regarding costs of Potomac River reservoir; contract payments; appropriations.

(a) The Mayor is authorized to contract with the United States, any state in the Potomac River basin, any agency or political subdivision thereof, and any other competent state or local authority, with respect to the payment by the District to the United States, either directly or indirectly, of the District's equitable share of any part or parts of the non-federal portion of the costs of any reservoirs authorized by the Congress for construction on the Potomac River or any of its tributaries. Every such contract may contain such provisions as the Mayor may deem necessary or appropriate.

(b) Unless hereafter otherwise provided by legislation enacted by the Council, all payments made by the District and all moneys received by the District pursuant to any contract made under the authority of this Act shall be paid from, or be deposited in, a fund designated by the Mayor. Charges for water delivered from the District water system for use outside the District may be adjusted to reflect the portions of any payments made by the District under contracts authorized by this Act which are equitably attributable to such use outside the District.

(c) There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(Mar. 24, 1972, 86 Stat. 113, Pub. L. 92-263, § 1-3; Dec. 24, 1973, 87 Stat. 808, Pub. L. 93-198, title IV, § 488.)

Prior Codifications. — 1981 Ed., § 43-1553.

1973 Ed., §§ 43-1542, 43-1542a.

References in text. — "This Act," referred to in subsection (b) of this section, is the District of Columbia Home Rule Act.

Editor's notes. — This section is also codified at § 1-204.88.

Definitions applicable: The definitions in § 1-201.03 apply to this section.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of govern-

ment were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2401.27. Acquisition of land for Washington Aqueduct.

Appropriations are hereby authorized for the acquisition, by gift, dedication, exchange, purchase, or condemnation, of land or rights in or on land or easements therein for the Washington Aqueduct by the Chief of Engineers, Corps of Engineers, United States Army, or his designated agents.

(Oct. 26, 1973, 87 Stat. 507, Pub. L. 93-140, § 18.)

Prior Codifications. — 1981 Ed., § 43-1554. 1973 Ed., § 43-1543.

Subchapter II. Prevention of Water Waste; Water Use by Manufacturers.

§ 34-2403.01. Prevention of water waste.

In order to prevent unnecessary waste of Potomac water, and in order to more fully enforce the laws in relation to the distribution of the same, the Chief of Engineers is authorized, after giving notice, to shut off the water when such notice shall be disregarded from any places where a waste of water is occurring.

(R.S., D.C., § 214.)

Prior Codifications. — 1981 Ed., § 43-1509. 1973 Ed., § 43-1507.

§ 34-2403.02. Use of Potomac water for mechanical and manufacturing purposes.

The use of Potomac water for mechanical and manufacturing purposes, or for private fountains, street and pavement washers, shall be allowed only when, in the opinion of the Chief of Engineers, it will not be detrimental to the general distribution of water in the District of Columbia.

(R.S., D.C., § 215; Feb. 25, 1885, 23 Stat. 319, ch. 145.)

Prior Codifications. — 1981 Ed., § 43-1510. 1973 Ed., § 43-1508.

§ 34-2403.03. Large-quantity consumers to maintain water meters.

(a) The supply of water to all manufacturing establishments, hotels, livery stables, and other commercial buildings, shall be determined by meters erected and maintained at the expense of the consumer.

(b) The bill for water meter service, including a charge for any repair made by the District, shall be due and payable when rendered. The Mayor shall impose a one-time charge of 10% for any water meter service charge that remains unpaid for more than 30 days and a penalty of 1% per month compounded monthly for any water meter repair service that remains unpaid for more than 60 days from the date the bill is rendered.

(c) In accordance with § 34-2407.02, the Mayor shall impose and enforce a continuing lien upon land and land improvements that are furnished water meter services if any charges remain unpaid for more than 60 days from the date the bill for services is rendered.

(d) The Mayor, with prior written notice to the owner of the date and time of entry, and consistent with constitutional guidelines, may enter any building, establishment, or other premises to inspect, install, replace, read, or repair any water meter required to be installed pursuant to the Public Works Act. If the Mayor is unable to gain entry to the real property after 2 attempts, the Mayor shall notify the owner or occupant to contact the Department within 3 business days after notice is mailed to the owner. If the owner or occupant fails to contact the Department, it shall be presumed that the owner refuses to permit entry to the property and the Mayor may impose a penalty of $100 and shut off the water supply to the real property. Upon the payment of the penalty or issuance of a final decision where the owner files a request for administrative review, the Mayor may restore the water supply.

(R.S., D.C., § 216; June 13, 1990, D.C. Law 8-136, § 4, 37 DCR 2620.)

Prior Codifications. — 1981 Ed., § 43-1511.

1973 Ed., § 43-1509.

Legislative history of Law 8-136. — Law 8-136, the "District of Columbia Water and Sewer Operations Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-269, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on March 27, 1990, and April 10,1990, respectively. Signed by the Mayor on April 17, 1990, it was assigned Act No. 8-192 and transmitted to both Houses of Congress for its review.

References in text. — The "Public Works Act," referred to in the first sentence of (d), is 68 Stat. 104, ch. 218.

CASE NOTES

In general.

Regulations imposed a responsibility upon commercial private property owners for maintaining and keeping the appurtenances to their water meters repaired and in a safe condition, and thus, water and sewer authority owed no duty to tenant, who was injured when she stepped on a defective water meter manhole cover at her apartment complex, for a manhole cover that was not properly maintained by the property owner. Odemns v. District of Columbia, 930 A.2d 137, 2007 D.C. App. LEXIS 400 (2007).

Subchapter III. Water Mains.

§ 34-2405.01. Water mains and service sewers erected at discretion of Mayor; costs assessed against abutting property.

The Mayor of the District of Columbia is authorized and directed, whenever

in his judgment the same may be necessary for the public safety, health, comfort, or convenience, to construct water mains and service sewers in any street, avenue, road, or alley in the District of Columbia; and the Assessor of said District shall levy assessments for the same against abutting property in the amount and manner hereinafter prescribed.

(Apr. 22, 1904, 33 Stat. 244, ch. 1417, § 1.)

Prior Codifications. — 1981 Ed., § 43-1512.

1973 Ed., § 43-1510.

Editor's notes. — Office of Assessor abolished: The Office of the Assessor was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Assessor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, abolished the Office of the Assessor and transferred the functions to the Finance Office in the Department of General Administration. The same Order provided that an Office of the Assessor would be created in the Finance Office. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, provided that the Finance Office (consisting of the Office of the Finance Officers, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) shall continue under the direction and control of the Director of General Administration, and prescribed the functions thereof. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. The Office of Budget and Financial Management was replaced by Organization Order 50, dated December 31, 1974, which Order established the Office of Budget and Management Systems. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1979, which Order established the Office of Budget and Resource Development.

Appropriations authorized: Public Law 104-194, 110 Stat. 2362, the District of Columbia Appropriations Act, 1997, provided for construction projects an increase of $46,923,000 (including an increase of $34,000,000 for the highway trust fund, reallocations and rescissions for a net rescission of $120,496,000 from local funds appropriated under this heading in prior fiscal years and an additional $133,419,000 in Federal funds), as authorized by §§ 43-1512 through 43-1519; §§ 43-1524, 43-1527 and 43-1654; and §§ 9-219 and 47-3404 §§ 10-619, 34-2304, 34-2405.01 through 34-2405.08; §§ 34-2413.08, 34-2408.10; and 47-3404, 2001 Ed.; including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: Provided, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: Provided further, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: Provided further, That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 9-107.01, note), for which funds are provided by this appropriation title, shall expire on September 30, 1998, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1998: Provided further, That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

Public Law 104-194, 1110 Stat. 2362, the District of Columbia Appropriations Act, 1997, provided for the Water and Sewer Enterprise Fund, $221,362,000 from other funds of which $41,833,000 shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

District of Columbia has no immunity from consequences of its negligent operation of sewerage department. D.C. Code 1951, §§ 43-1520, 43-1521. Scull v. District of Columbia, 250 F.2d 767, 1957 U.S. App. LEXIS 4203 (C.A.D.C. 1957).

§ 34-2405.02. Assessments for water mains.

For laying or constructing water mains in the District of Columbia assessments shall be levied at the rate of $3 per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a water main shall be laid, and that for laying or constructing service sewers in the District of Columbia assessments shall be levied at the rate of $4 per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a sewer shall be laid; provided, that assessments for water mains and service sewers in the case of lots or parcels of land not more than 100 feet in depth shall be levied upon the fronts or rears of such lots or parcels of land, and not upon both the fronts and rears of such lots or parcels of land; but lots or parcels of land more than 100 feet in depth, except corner lots, shall be assessed upon both their fronts and rears when water mains or service sewers are laid abutting the same; provided, that corner lots shall be assessed for water mains and service sewers only on their short fronts with a depth of not exceeding 100 feet; any excess of the other front over 100 feet shall be subject to assessment, as hereinbefore provided; provided, that the areas of all lots or parcels of land which have been assessed for water mains by the square foot under any previous act of Congress, or of the late legislative assembly of the District of Columbia, shall not be again assessed for water mains; provided further, that when the Mayor of the District of Columbia shall deem it advantageous to lay water mains or service sewers on each side of any street, avenue, road, or alley assessments shall be levied at the rate, within the time and in the manner in this section provided for, against the lots abutting the side of the street, avenue, road, or alley in which the water main or service sewer is laid.

(Aug. 11, 1894, 28 Stat. 275, ch. 253; Apr. 22, 1904, 33 Stat. 244, ch. 1417,§ 2; Dec. 22, 1927, 45 Stat. 11, ch. 5; July 3, 1930, 46 Stat. 989, ch. 848,§ 1; June 4, 1934, 48 Stat. 876, ch. 389, § 1; July 16, 1947, 61 Stat. 360, ch. 258; May 18, 1954, 68 Stat. 109, ch. 218, title III, §§ 301, 302.)

Prior Codifications. — 1981 Ed., § 43-1513.

1973 Ed., § 43-1511.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

The acts of congress establishing waterworks in the District of Columbia, and Act Aug. 11, 1894 (28 Stat. 275), providing that assessments for laying water mains shall be at the uniform rate of $1.25 per front foot against all abutting lots, are conclusive and binding on the property owners, though passed without notice to them, or opportunity to be heard on these questions. Parsons v. District of Columbia, 18 S.Ct. 521, 1898 U.S. LEXIS 1528 (U.S.Dist.Col. 1898).

An assessment for laying water mains is not invalid because it exceeds the actual cost of the work, when such mains become a part on the general water system, and the assessment, under the statute authorizing it, is not only to defray the cost of laying the pipes, but to raise a fund for keeping the system in efficient repair. Parsons v. District of Columbia, 18 S.Ct. 521, 1898 U.S. LEXIS 1528 (U.S.Dist.Col. 1898).

§ 34-2405.03. Notice of assessments.

The Assessor of the District of Columbia shall give notices as herein provided of the levying of assessments for water mains and service sewers. Assessments shall be levied within 60 days after the completion of the main or service sewer, and the owner or owners affected by such assessments shall be notified that the same have been levied by a notice which shall be served upon the owner of the lot or parcel of land if he or she be a resident of the District of Columbia, and his or her residence be known. If the owner be a nonresident or his or her residence be unknown, the notice shall be served on his or her agent or tenant. The service of such notice, where the owner or his or her agent or tenant resides in the District of Columbia, shall be personal or by leaving the same with some person of suitable age, either a member of his family or in his employ, at the residence or place of business of such owner, agent, or tenant; and return of such service, stating the manner thereof, shall be made in writing under oath and filed in the office of the Assessor of the District of Columbia. If there be no agent or tenant known to said Assessor, and the owner or owners be not residents of the District of Columbia, or if the owner be a resident of the District of Columbia and cannot be found therein, and no person of suitable age as aforesaid can be found at his or her residence or place of business, notice shall be given by advertisement once a week for 3 successive weeks in some daily newspaper published in said District, and in said publication of said notice each several piece of property shall be described in a separate paragraph, and the cost of such advertisement shall be added to the amount of said assessment and collected in the same manner that said assessment is collected.

(Apr. 22, 1904, 33 Stat. 245, ch. 1417, § 3.)

Prior Codifications. — 1981 Ed., § 43-1514.

1973 Ed., § 43-1512.

Editor's notes. — Office of Assessor abolished: The Office of the Assessor was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Assessor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, abolished the Office of the Assessor and transferred the functions to the Finance Office in the Department of General Administration. The same order provided that an Office of the Assessor would be created in the Finance Office. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, provided that the Finance Office (consisting of the Office of the Finance Officers, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) shall continue under the direction and control of the Director of General Administration, and prescribed the functions thereof. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. The Office of Budget and Financial Management was replaced by Organization Order 50, dated December 31, 1974, which Order established the Office of Budget and Management Systems. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1979, which Order established the Office of Budget and Resource Development.

§ 34-2405.04. Water main and service sewer assessments payable in three installments.

Assessments for water mains and service sewers shall be payable in 3 equal installments, the 1st of which shall be due and payable without interest within 30 days from date of service of notice or of the last publication of notice as the case may be, the second within 1 year, and the third within 2 years from the date of assessment, and interest at the rate of 6% per annum shall be charged on all amounts which shall remain unpaid at the expiration of 30 days from the date of service of notice or last publication as the case may be; but the owner of the property assessed may, at his option, at any time after the levying of such assessment, pay the same in full; provided, that if any installment of any assessment for water main or service sewer levied under the provisions of this subchapter shall not be paid when due and payable the property against which said assessment was levied may be sold for said delinquent installment at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if said installment shall not have been paid prior to said sale.

(Apr. 22, 1904, 33 Stat. 245, ch. 1417, § 4.)

Prior Codifications. — 1981 Ed., § 43-1515.

1973 Ed., § 43-1513.

§ 34-2405.05. Assessment of property in County of Washington for water mains and service sewers.

Property in the County of Washington, not subdivided into blocks or lots, or both, shall not be assessed for water mains or service sewers until subdivided; provided, that where houses are built on any unsubdivided land and connection is made with a water main or service sewer, assessment shall be made as herein provided for in the case of subdivided property by assessing a frontage of 50 feet on each side of said connection with a depth of 100 feet, except that no double assessment shall be levied; said assessment to be levied within 60 days after said connection is made; and if such unsubdivided land is thereafter subdivided into blocks or lots, such lots shall be assessed as herein provided as to subdivided lands, but the 50 feet on each side of said connection, with a depth of 100 feet, shall not be again assessed; provided further, that assessments at the rate and in the manner herein provided for shall be levied against each lot or parcel of land abutting any water main or service sewer in all subdivisions of land, within 60 days after the recording of such subdivision in the office of the Surveyor of the District of Columbia, except in cases where said lots or parcels of land have been previously assessed for the same main or service sewer.

(Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 5.)

Prior Codifications. — 1981 Ed., § 43-1516. 1973 Ed., § 43-1514.

§ 34-2405.06. Relevying assessments when assessments declared void.

The Assessor of the District of Columbia is hereby authorized and directed in cases where water-main assessments, or assessments for service sewers, may be quashed, canceled, set aside, or declared void by the Superior Court of the District of Columbia, or may otherwise be canceled or set aside, by reason of an imperfect or erroneous description of the lot or parcel of ground against which the same shall have been levied, by reason of such tax or assessment not having been authenticated by the proper officer or by reason of a defective return of service of notice, or for any technical reason other than the right of the authorities of the District of Columbia to levy assessment or lay the main or service sewer in respect of which assessment was levied, to relevy such assessment at the rate and in the manner provided for in this subchapter; provided, that such reassessment shall be made within 60 days from date of such cancellation.

(Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 7; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 588, Pub. L. 91-358, title I,§ 168(b).)

Prior Codifications. — 1981 Ed., § 43-1517.
1973 Ed., § 43-1515.

Editor's notes. — Office of Assessor abolished: The Office of the Assessor was abolished and the functions thereof transferred to the

Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Assessor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, abolished the Office of the Assessor and transferred the functions to the Finance Office in the Department of General Administration. The same order provided that an Office of the Assessor would be created in the Finance Office. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, provided that the Finance Office (consisting of the Office of the Finance Officers, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) shall continue under the direction and control of the Director of General Administration, and prescribed the functions thereof. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. The Office of Budget and Financial Management was replaced by Organization Order No. 50, dated December 31, 1974, which Order established the Office of Budget and Management Systems. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1979, which Order established the Office of Budget and Resource Development.

§ 34-2405.07. Disposal of funds received by Collector of Taxes.

All sums received by the Collector of Taxes under the provisions of this subchapter on account of assessments levied for the construction of service sewers shall be credited to the appropriation under which the sewer was constructed for the fiscal year in which such sums shall be received.

(Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 8.)

Prior Codifications. — 1981 Ed., § 43-1518.

1973 Ed., § 43-1516.

Editor's notes. — Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

§ 34-2405.08. "Service sewer" defined.

A service sewer within the meaning of the provisions of this subchapter shall be a sewer with which connection may be directly made for the purpose of providing sewerage facilities to abutting property, and such sewers shall be so indicated on the records of the Sewer Division of the Engineer Department of the District of Columbia.

(Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 9.)

Prior Codifications. — 1981 Ed., § 43-1519.

1973 Ed., § 43-1517.

Transfer of Functions. — Reorganization Order No. 28 of the Board of Commissioners, dated April 3, 1953, now redesignated Organization Order No. 147, dated August 19, 1965, established a Department of Sanitary Engineering headed by a Director. The Department performed sanitary engineering services and operations for the District including water distribution, sanitary, storm, and combined sewer systems, sewage treatment, and collection and disposal of waste material. The Office of the Water Registrar and the previously existing Department of Sanitary Engineering (which included the Sewer Division, Water Division, Sanitation Division, and the Sewage Treatment Plant) were abolished and their functions transferred to this Department. The Orders were issued pursuant to Reorganization Plan No. 5 of 1952. Functions of the Department of Sanitary Engineering as set forth in Organization Order No. 147, as amended, were transferred to the Department of Environmental Services by Commissioner's Order No. 71-255, dated July 27, 1971.

Subchapter IV. Discontinuance of Service.

§ 34-2407.01. Discontinuance of water service for failure to pay water charges.

(a) The Mayor of the District of Columbia is authorized to provide for the collection of water charges, in advance or otherwise, from the owner or occupant of any building, establishment, or other place furnished water or water service by the District, and to shut off the water supply to any such building, establishment, or other place upon failure of the owner or occupant thereof to pay such water charges within 30 days from the date of rendition of the bill therefor. Such authority to shut off the water supply may be exercised by the Mayor regardless of any change in ownership or occupancy of such building, establishment, or other place. When the water supply to any such building, establishment, or other place has been shut off for failure to pay such water charges, whether the water supply to such building, establishment, or other place was shut off before or after May 18, 1954, the Mayor shall not again supply such building, establishment, or other place with water until all arrears of water charges, together with penalties and the costs actually incurred in shutting off and restoring the water supply, are paid.

(b) If the water supply to any property has been shut off for failure to pay District water and sanitary sewer service charges, and later restored without the express authorization of the Mayor, the Mayor shall impose a fine in an amount not less than 20% of the delinquent charges or more than $100, whichever is greater, upon the owner or occupant of the property, unless the Mayor determines that the owner or occupant did not restore or solicit a person to restore the water.

(May 18, 1954, 68 Stat. 102, ch. 218, title I, § 103; June 13, 1990, D.C. Law 8-136, § 2(b), 37 DCR 2620; Nov. 25, 1993, D.C. Law 10-65, § 501(a), 40 DCR 7351.)

Section references. — This section is referred to in §§ 34-2110, 34-2407.02 and 34-2407.03.

Prior Codifications. — 1981 Ed., § 43-1528.

1973 Ed., § 43-1521b.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of D.C. Water and Sewer Operations Temporary Amendment Act of 1993(D.C. Law 10-3, May 18, 1993, law notification 42 DCR 3404).

Legislative history of Law 8-136. — For legislative history of D.C. Law 8-136, see Historical and Statutory Notes following § 34-2403.03.

Legislative history of Law 10-65. — Law 10-65, the "Omnibus Spending Reduction Act of 1993," was introduced in Council and assigned Bill No. 10-323, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on July 21, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 6, 1993, it was assigned Act No. 10-120 and transmitted to both Houses of Congress for its review. D.C. Law 10-65 became effective on November 25, 1993.

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 34-2409.04.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Due process.
In general.

Due process.

Where statute authorized mayor to discontinue water services only if owner or occupant of premises failed to pay water charges, customer, who requested opportunity to contest water/sewer service bill in trial-type hearing pursuant to District of Columbia Administrative Procedure Act, had property interest in water services provided by District. D.C. Code 1973, §§ 1-1502(8), 43-1521b; D.C. Code 1981, §§ 1-1502(8), 43-1528; U.S. Const.Amend. 14. Bryant v. Barry, 456 A.2d 1252, 1983 D.C. App. LEXIS 341 (1983).

Although customer had property interest in water services, due process did not require that she receive trial-type hearing to resolve dispute regarding bill where procedures established for customers to protest water bills adequately provided customer with opportunity for presentation of complaint that she was being overcharged or charged for services not rendered. D.C. Code 1973, §§ 1-1502(8), 43-1521b; D.C. Code 1981, §§ 1-1502(8), 43-1528; U.S.C. Const.Amend. 14. Bryant v. Barry, 456 A.2d 1252, 1983 D.C. App. LEXIS 341 (1983).

Where District of Columbia informed customer of procedures she could follow to protest water/sewer service bill approximately ten months before she filed action requesting trial-type hearing, due process notice requirement was satisfied. U.S. Const.Amend. 14; D.C. Code 1973, §§ 1-1502(8), 43-1521b; D.C. Code 1981, §§ 1-1502(8), 43-1528. Bryant v. Barry, 456 A.2d 1252, 1983 D.C. App. LEXIS 341 (1983).

In general.

There is no statutory authority that explicitly compels District of Columbia to shut off water supply for failure to pay water charges; such authority as is statutorily granted is discretionary only. D.C. Code §§ 43-1521b, 43-1521c. Masszonia v. Washington, 321 F. Supp. 965, 1971 U.S. Dist. LEXIS 14887 (1971), appeal dismissed by 476 F.2d 915, 155 U.S. App. D.C. 159, 1973 U.S. App. LEXIS 11452 (1973).

Where low income tenants have paid rent to landlord whom they have relied upon to pay water bills and who has then abandoned the building and its past due water bill, and relocation of those tenants is difficult, if not impossible due to the critical housing shortage exist-

ing in District of Columbia, it would be an abuse of discretion for District of Columbia to shut off the water and thereby force the tenants to pay that for which they may not be liable. D.C. Code §§ 43-1521b, 43-1521c. Masszonia v. Washington, 321 F. Supp. 965, 1971 U.S. Dist. LEXIS 14887 (1971), appeal dismissed by 476 F.2d 915, 155 U.S. App. D.C. 159, 1973 U.S. App. LEXIS 11452 (1973).

Where low income tenants who cannot immediately relocate face the imminent failure of essential utility services which are landlord's responsibility, and landlord is beyond the effective power of the court, District of Columbia has the duty to provide these services on a temporary and emergency basis. D.C. Code § 5-313. Masszonia v. Washington, 321 F. Supp. 965, 1971 U.S. Dist. LEXIS 14887 (1971), appeal dismissed by 476 F.2d 915, 155 U.S. App. D.C. 159, 1973 U.S. App. LEXIS 11452 (1973).

The obligation to pay fees owed to the Water and Sewer Authority (WASA) resided with owner of apartment building when tenants failed to pay their water bills, though owner had installed water meters in each apartment and WASA had been billing tenants directly, and WASA was authorized to file a lien on the building when owner refused to pay amounts that had been overdue for more than 60 days; governing statute focused on the owner of the property where water services were rendered and not the individual tenant who received the bill, and procedures for tenant billing were a compliment for an owner's ultimate obligation. Euclid St., LLC v. D.C. Water & Sewer Auth., 41 A.3d 453, 2012 D.C. App. LEXIS 142 (2012).

§ 34-2407.02. Lien for water charges.

(a)(1) Except as provided in subsections (c) and (d) of this section, if an owner of real property fails to pay District water and sanitary sewer service charges in full accordance with § 34-2407.01, for all bills rendered which remain unsatisfied for 60 days or more the Mayor may file a certificate of delinquency with the Recorder of Deeds.

(2) Upon filing, the certificate of delinquency shall constitute a continuing lien against the real property and show the amount of unpaid charges for District water and sanitary sewer services. The continuing lien shall be for the current full amount of the unpaid water and sanitary sewer service charges, penalties, interest, and administrative costs.

(3) The Mayor may enforce the lien if any water and sanitary sewer service charges remain unpaid for more than 180 days from the date the bill is rendered or for more than 15 days after a final decision of an appeal challenging the bill, whichever is later in the same manner that real property tax liens are enforced pursuant to Chapter 13 and Subchapter IV of Chapter 13A of Title 47.

(4) The real property may be sold for the unpaid water and sanitary sewer charges, penalties, interest and administrative costs at a tax sale in accordance with the provisions for the sale of property for delinquent real property taxes pursuant to Chapter 13 of Title 47.

(5) If any real property sold for unpaid water and sanitary sewer service charges is not redeemed by the owner within 180 days from the date of sale, including payment of 2% interest for each month until the property is redeemed, the Mayor shall furnish a deed to the purchaser or holder of the certificate of sale in accordance with § 47-1304.

(6) Proceeds from the sale that represent unpaid water charges shall be credited to the Water and Sewer Enterprise Fund of the District of Columbia as established by § 47-375(g).

(b) A lien for water and sanitary sewer charges shall have priority over any other lien, except a lien for District taxes. The lien for water and sanitary sewer service charges shall remain in effect until the charges set forth in the

certificate and any accrued additional charges, interest, penalties, and administrative costs are paid in full. Upon final payment of any delinquent charges, penalties, interest, and administrative costs, the Mayor shall file promptly a certificate of satisfaction with the Recorder of Deeds.

(c) The Mayor may defer or forgive, in whole or in part, any water and sanitary sewer service charges due the District for any qualified real property pursuant to § 6-1503.

(d) The Mayor shall not sell the residence of an owner who occupies a single family home for failure to pay District water and sanitary sewer charges in accordance with subsection (a) of this section.

(May 18, 1954, 68 Stat. 102, ch. 218, title I, § 104; Oct. 20, 1988, D.C. Law 7-177, § 9(a), 35 DCR 6158; June 13, 1990, D.C. Law 8-136, § 2(c), 37 DCR 2620; Apr. 9, 1997, D.C. Law 11-198, § 203, 43 DCR 4569; June 9, 2001, D.C. Law 13-305, § 508(d), 48 DCR 334; Mar. 30, 2004, D.C. Law 15-132, § 2, 51 DCR 1804.)

Section references. — This section is referred to in §§ 2-1215.15, 6-1503, 8-152.03, 34-2109, 34-2110, 34-2202.16, 34-2202.19, 34-2403.03, 34-2407.03, 47-1052, 47-1303, 47-1304, 47-1306, 47-1307, and 47-1312.

Prior Codifications. — 1981 Ed., § 43-1529.

1973 Ed., § 43-1521c.

Effect of amendments. — D.C. Law 13-305 rewrote subsec. (a) which had read:

"(a) Except as provided in subsections (c) and (d) of this section, if an owner of real property fails to pay District water and sanitary sewer service charges in full in accordance with § 34-2407.01 or 34-2413.10, on or after the 60th day, but not later than the 120th day, after the bill is rendered, the Mayor shall file a certificate of delinquency with the Recorder of Deeds. Upon filing, the certificate of delinquency shall constitute a continuing lien against the real property and show the amount of unpaid charges for District water and sanitary sewer services. The Mayor shall enforce the lien if any water and sanitary sewer service charges remain unpaid for more than 180 days from the date the bill is rendered or for more than 15 days after a final decision of an appeal challenging the bill, whichever is later. The real property shall be sold for the unpaid water and sanitary sewer service charges, penalties, interest, and administrative costs at the next tax sale conducted pursuant to § 47-1301, in accordance with the provisions for the sale of property for delinquent real property taxes pursuant to Chapter 13 of Title 47. If any real property sold for unpaid water and sanitary sewer service charges is not redeemed by the owner within 180 days from the date of sale, including payment of 2% interest for each month until the property is redeemed, the Mayor shall furnish a deed to the purchaser or holder of the certificate of sale in accordance with § 47-1304. Proceeds from the sale that represent unpaid water charges shall be credited to the Water and Sewer Enterprise Fund of the District of Columbia as established by § 47-375(g)."

D.C. Law 15-132 rewrote subsec. (a) which had read:

"(a) Except as provided in subsections (c) and (d) of this section, if an owner of real property fails to pay District water and sanitary sewer service charges in full in accordance with § 34-2407.01 on or before the 60th day, but not later than the 120th day, after the bill is rendered, the Mayor shall file a certificate of delinquency with the Recorder of Deeds. Upon filing, the certificate of delinquency shall constitute a continuing lien against the real property (including a lien for purposes of § 47-1340(c)) and show the amount of unpaid charges for District water and sanitary sewer services. The Mayor may enforce the lien, plus penalties, interest, and administrative costs, in accordance with the provisions for the sale of property for delinquent real property taxes under Chapter 13A of Title 47 if any water and sanitary sewer service charges remain unpaid upon the later of 181 days after the date the bill is rendered or 16 days after a final decision of an appeal challenging the bill. If an accounting is made in accordance with, and subject to, § 47-1340(f), proceeds from the sale that represent unpaid water charges shall be credited to the Water and Sewer Enterprise Fund of the District of Columbia as established by § 47-375(g)."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 203 of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

For temporary (225 day) amendment of section, see § 8(d) of the Real Property Tax Clarity

and Litter Control Administration Temporary Amendment Act of 2001 (D.C. Law 14-8, June 13, 2001, law notification 48 DCR 5916).

Emergency legislation. — For temporary amendment of section, see § 203 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 203 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 203 of the Fiscal year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

For temporary (90 day) amendment of section, see § 8(d) of Real Property Tax Clarity and Litter Control Administration Emergency Act of 2001 (D.C. Act 14-22, March 16, 2001, 48 DCR 2706).

Legislative history of Law 7-177. — Law 7-177 was introduced in Council and assigned Bill No. 7-208, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on August 2, 1988, it was assigned Act No. 7-237 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-136. — For legislative history of D.C. Law 8-136, see Historical and Statutory Notes following § 34-2301.

Legislative history of Law 11-198. — Law 11-198, the "Fiscal Year 1997 Budget Support Act of 1996," was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective April 9, 1997.

Legislative history of Law 13-305. — Law 13-305, the "Tax Clarity Act of 2000," was introduced in Council and assigned Bill No. 13-586, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 2, 2000, and November 8, 2000, respectively. Signed by the Mayor on December 13, 2000, it was assigned Act No. 13-501 and transmitted to both Houses of Congress for its review. D.C. Law 13-305 became effective on June 9, 2001.

Legislative history of Law 15-132. — Law 15-132, the "Water and Sewer Authority Collections Clarification Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-405, which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on December 2, 2003, and January 6, 2004, respectively. Signed by the Mayor on January 29, 2004, it was assigned Act No. 15-333 and transmitted to both Houses of Congress for its review. D.C. Law 15-132 became effective on March 30, 2004.

Delegation of Authority. — Delegation of Authority to the Director of the Department of Housing and Community Development for the Issuance of District of Columbia Water and Sewer Authority ('WASA') Deeds, see Mayor's Order 2008-89, June 23, 2008 (55 DCR 9368).

Editor's notes. — Application of provisions of Law 11-198: Section 1001 of D.C. Law 11-198 provided that titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Mayor authorized to issue rules: Section 13 of D.C. Law 7-177 provided that the Mayor shall issue rules to implement the provisions of the act.

CASE NOTES

ANALYSIS

Attorney fees.
In general.
Persons liable.
Remand.
Retroactive effect.

Attorney fees.

Lien holder was entitled to award of attorney fees in action seeking forfeiture of property subject to lien for delinquent water and sewer charges; water and sewer authority (WASA) statutory scheme permitted award of attorney fees, and lien holder gave proper notice to property owner. ETDH Assocs. v. Waterfall Ventures, LLC, 999 A.2d 22, 2010 D.C. App. LEXIS 349 (2010).

In general.

Tax sale purchaser who acquired property sold for unpaid water and sewer bills was entitled to interest at rate of 1% per month when property was timely redeemed, rather than 2% monthly interest rate provided by water and sewer lien statute. D.C. Code 1981, §§ 43-1529, 47-1304, 47-1306. Stuart v. District of Columbia, 694 A.2d 49, 1997 D.C. App. LEXIS 81 (1997).

Act of Congress governing District of Columbia water system and providing that District with continuing lien for water charges upon

any land and improvements thereon to which water service has been furnished represent valid exercise of police power. D.C. Code 1951, § 43-1521c. Friedman v. District of Columbia, 172 A.2d 562, 1961 D.C. App. LEXIS 255 (Cr.App. 1961).

Persons liable.

The obligation to pay fees owed to the Water and Sewer Authority (WASA) resided with owner of apartment building when tenants failed to pay their water bills, though owner had installed water meters in each apartment and WASA had been billing tenants directly, and WASA was authorized to file a lien on the building when owner refused to pay amounts that had been overdue for more than 60 days; governing statute focused on the owner of the property where water services were rendered and not the individual tenant who received the bill, and procedures for tenant billing were a compliment for an owner's ultimate obligation. Euclid St., LLC v. D.C. Water & Sewer Auth., 41 A.3d 453, 2012 D.C. App. LEXIS 142 (2012).

Assignment of water and sewage lien to lienholder's assignee was not tax sale, and thus, assignment did not provide assignee right to foreclose on property owner's right to redeem, absent any showing that property was ever transferred at public auction. Crusader as Custodian for Strategic Mun. Lien Invs., LLC v. Heyward, 22 A.3d 744, 2011 D.C. App. LEXIS 288 (2011).

Lien for delinquent water and sewer charges complied with statutory requirements, and therefore was enforceable; that certificate erroneously listed property's management company instead of record owner did not necessarily invalidate lien, as lien ran with the land, square and lot numbers for the property were not statutorily required in certificate, and owner was provided notice of the delinquent charges and the ensuing lien. ETDH Assocs. v. Waterfall Ventures, LLC, 999 A.2d 22, 2010 D.C. App. LEXIS 349 (2010).

Remand.

Trial court's analysis of whether unpaid water and sewer bill could be deducted from foreclosure sale proceeds was insufficient to permit meaningful appellate review, and remand was required, where trial court did not address the interplay between the statute governing the amount a creditor who is also the purchaser at a sale under a deed of trust is required to pay to the trustee, the deed of trust, the foreclosure agreement, and the statute allowing the District of Columbia to obtain a lien for water charges. D.C. Code 1981, §§ 43-1529, 45-717. Concord Enters. v. Binder, 710 A.2d 219, 1998 D.C. App. LEXIS 87 (1998).

Retroactive effect.

Statute giving District of Columbia continuing lien for water charges upon any land and improvements thereon to which water or water service has been furnished did not operate to create retroactive lien for water furnished prior to its effective date or to compel owner to pay obligation of earlier owner for water charges before its effective date. D.C. Code 1951, § 43-1521c. Friedman v. District of Columbia, 172 A.2d 562, 1961 D.C. App. LEXIS 255 (Cr.App. 1961).

§ 34-2407.03. Remedies not exclusive.

The remedies set forth in §§ 34-2407.01, 34-2407.02, and 34-2413.10 [repealed] are hereby declared to be cumulative and not exclusive.

(May 18, 1954, 68 Stat. 102, ch. 218, title I, § 105.)

Section references. — This section is referred to in § 34-2110.

Prior Codifications. — 1981 Ed., § 43-1530.

1973 Ed., § 43-1521d.

Subchapter V. Fireplug Tax.

§ 34-2409.01. Levy permitted.

To aid in the erection, maintenance, and efficiency of fireplugs, a special annual tax may be levied on all buildings in the City of Washington within 500 feet of any main water pipe, into which, or the premises connected therewith, the water has not been introduced, and the owners or occupants of which do not pay any annual water rate in accordance with law.

(R.S., D.C., § 205; June 17, 1890, 26 Stat. 159, ch. 428.)

Prior Codifications. — 1981 Ed., § 43-1534. 1973 Ed., § 43-1525.

§ 34-2409.02. Rates.

The fireplug tax shall be levied with reference to the value of the building so taxed, and shall not be more than $5 nor less than $1 per year.

(R.S., D.C., § 206.)

Prior Codifications. — 1981 Ed., § 43-1535. 1973 Ed., § 43-1526.

§ 34-2409.03. Cessation upon introduction of water.

Whenever the water is introduced, in conformity with law, into any building or premises, the fireplug tax thereon shall cease.

(R.S., D.C., § 207.)

Prior Codifications. — 1981 Ed., § 43-1536. 1973 Ed., § 43-1527.

§ 34-2409.04. Levy upon discontinuance of water service.

Whenever water is discontinued from any building or premises into which it has been introduced, such building shall be subject to the fireplug tax from the date of the discontinuance of the water.

(R.S., D.C., § 208.)

Prior Codifications. — 1981 Ed., § 43-1537. 1973 Ed., § 43-1528.

Subchapter V-A. Private Fire Hydrants.

§ 34-2410.01. Definitions.

For the purposes of this subchapter, the term "private fire hydrant" means a hydrant which is not owned by the District of Columbia. The term "private fire hydrant" does not include any private water distribution system connecting the private fire hydrant to the public water system.

(Mar. 31, 2011, D.C. Law 18-337, § 2, 58 DCR 609.)

Temporary Addition of Section. — Section 2 of D.C. Law 18-93 added a section to read as follows: "Sec. 2. Private fire hydrants. "As of October 1, 2009, the Mayor and any other District official is prohibited from approving any permit or related plan that authorizes the installation of a private fire hydrant without an agreement, to be recorded in the land records of the Recorder of Deeds, establishing the person or entity responsible for the maintenance, repair, and replacement of the private fire hydrant in perpetuity."

Section 4(b) of D.C. Law 18-93 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 18-278 added a section

to read as follows: "Sec. 2. Private fire hydrants. "As of October 1, 2009, the Mayor and any other District official is prohibited from approving any permit or related plan that authorizes the installation of a private fire hydrant without an agreement, to be recorded in the land records of the Recorder of Deeds, establishing the person or entity responsible for the maintenance, repair, and replacement of the private fire hydrant in perpetuity."

Section 4(b) of D.C. Law 18-278 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2 of Private Fire Hydrant Responsibility Emergency Act of 2009 (D.C. Act 18-197, October 8, 2009, 56 DCR 8130).

For temporary (90 day) addition, see § 2 of Private Fire Hydrant Responsibility Emergency Act of 2010 (D.C. Act 18-511, July 30, 2010, 57 DCR 7592).

For temporary (90 day) addition, see § 2 of Private Fire Hydrant Responsibility Congressional Review Emergency Act of 2010 (D.C. Act 18-581, October 19, 2010, 57 DCR 10116).

Legislative history of Law 18-337. — Law 18-337, the "Private Fire Hydrant Act of 2010", was introduced in Council and assigned Bill No. 18-557, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on November 23, 2010, and December 7, 2010, respectively. Signed by the Mayor on January 12, 2011, it was assigned Act No. 18-681 and transmitted to both Houses of Congress for its review. D.C. Law 18-337 became effective on March 31, 2011.

§ 34-2410.02. Private fire hydrants.

The Mayor shall not approve any permit or related plan that authorizes the installation of a private fire hydrant without an agreement, to be recorded in the land records of the Recorder of Deeds, establishing the entity or person, and successors thereof, responsible for the maintenance, repair, and replacement of the private fire hydrant in perpetuity.

(Mar. 31, 2011, D.C. Law 18-337, § 3, 58 DCR 609.)

Legislative history of Law 18-337. — For history of Law 18-337, see notes under § 34-2410.01.

§ 34-2410.03. Maintenance of private fire hydrants.

(a) The District of Columbia Water and Sewer Authority shall have a right of access to inspect, maintain, repair, or replace any private fire hydrant, including the connected water distribution system, in the District of Columbia.

(b) If the identified owner of a private fire hydrant fails to effect the maintenance, repair, or replacement as required in the notice provided pursuant to § 34-2410.04(c), the District of Columbia Water and Sewer Authority may effect such maintenance, repair, or replacement of the private fire hydrant and the connected water distribution system.

(c) The District of Columbia Water and Sewer Authority shall bill the owner of the private fire hydrant for the cost of the maintenance, repair, or replacement. If the owner fails to pay for the repair, the District of Columbia Water and Sewer Authority shall have the authority to obtain and enforce a lien against the owner of the private fire hydrant in accordance with procedures established by § 34-2407.02.

(d) The District of Columbia Water and Sewer Authority shall keep and maintain records of all inspections, maintenance, repair, and replacement of a private fire hydrant and shall make the records available to the owner of the

private fire hydrant upon request. The records shall be kept and maintained for not less than 10 years.

(Mar. 31, 2011, D.C. Law 18-337, § 4, 58 DCR 609.)

Legislative history of Law 18-337. — For history of Law 18-337, see notes under § 34-2410.01.

§ 34-2410.04. Inspection of private fire hydrants.

(a) The Mayor and the District of Columbia Water and Sewer Authority shall have a right of access for the inspection of any private fire hydrant in the District of Columbia to determine operational ability and compliance with applicable standards. The Mayor and the District of Columbia Water and Sewer Authority shall designate, through a memorandum of understanding, the agency or authority responsible for the inspection of private fire hydrants ("Inspection Agency"). If such a memorandum of understanding is not executed and in effect, then the Mayor shall be the Inspection Agency for purposes of this subchapter.

(b) The Inspection Agency shall regularly inspect all private fire hydrants in the District of Columbia to determine operational ability and compliance with applicable standards.

(c) Upon determination by the Inspection Agency that a private fire hydrant is in need of maintenance, repair, or replacement, and if ownership has been determined pursuant to § 34-2410.05, the Inspection Agency shall notify:

(1) The Mayor and the District of Columbia Water and Sewer Authority of the status of the private fire hydrant; and

(2) The owner of the private fire hydrant, in writing, of:

(A) The location of the private fire hydrant in need of maintenance, repair, or replacement;

(B) The owner's responsibility with regard to the maintenance, repair and replacement of the private fire hydrant;

(C) The maintenance, repair, and replacement identified as necessary for the private fire hydrant;

(D) The owner's responsibility to effect the maintenance, repair, and replacement identified in the notice within a specified period of time, which shall be not less than 60 days of the date on which notice is provided under this section; and

(E) The right of the District of Columbia Water and Sewer Authority to effect the maintenance, repair and replacement of the private fire hydrant and bill the owner as described in § 34-2410.03.

(d) The Inspection Agency shall keep and maintain records of all inspections made of a private fire hydrant and shall make the records available to the owner of the private fire hydrant upon request. The records shall be kept and maintained for not less than 10 years.

(Mar. 31, 2011, D.C. Law 18-337, § 5, 58 DCR 609.)

Legislative history of Law 18-337. — For history of Law 18-337, see notes under § 34-2410.01.

§ 34-2410.05. Private fire hydrants: determination of ownership.

(a)(1) The Mayor shall determine the ownership of a private fire hydrant through a title search. The location of a private fire hydrant on the property of a single-family dwelling is insufficient, by itself, for determining ownership under this subsection.

(2) The Mayor shall notify the person identified as the owner of the private fire hydrant, in writing, that the person has been identified as the owner of the private fire hydrant and, as such, is responsible for the maintenance, repair, and replacement of the private fire hydrant.

(b) If the Mayor is unable to establish ownership of a private fire hydrant under subsection (a) of this section, the District shall be responsible for the maintenance, repair, and replacement of the private fire hydrant.

(c) This section shall not apply to private fire hydrants on the property of non-residential institutions, including colleges and universities, or on the property of the federal government or a foreign government.

(Mar. 31, 2011, D.C. Law 18-337, § 6, 58 DCR 609.)

Legislative history of Law 18-337. — For history of Law 18-337, see notes under § 34-2410.01.

§ 34-2410.06. Limitations on responsibility for maintenance, repair, and replacement of private fire hydrants.

(a) This subchapter establishes responsibility for the maintenance, repair, and replacement of private fire hydrants that had been permitted prior to October 8, 2009. If this responsibility belongs to the District government, pursuant to this subchapter, the cost to effect the maintenance, repair, or replacement of a the fire hydrant shall be subject to the availability of appropriations.

(b) The responsibility for conducting and notifying owners of the results of a title search, and the inspection, of the private fire hydrants as required by this subchapter, shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

(Mar. 31, 2011, D.C. Law 18-337, § 7, 58 DCR 609.)

Legislative history of Law 18-337. — For history of Law 18-337, see notes under § 34-2410.01.

Editor's notes. — The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law 18-337 has not been included in an approved budget and financial plan as required by subsection (b) of this section. That determination, however, does not affect the codification of this section.

Subchapter VI. Delivery of Water.

§ 34-2411.01. Delivery of water — Falls Church, Virginia, and adjacent areas; installation expenses; payments; revocation of permit.

The Secretary of the Army, on the recommendation of the Chief of Engineers, United States Army, and the Mayor of the District of Columbia, is hereby authorized in his discretion, upon request of the City Council of the City of Falls Church, Fairfax County, Virginia, or any other competent state or local authority in the Washington metropolitan area in Virginia, to permit the delivery of water from the District of Columbia water system at the Dalecarlia Filtration Plant, or at other points on said water system to the Falls Church water system for the purpose of supplying water for the use of said City and such adjacent areas as are now or shall hereafter be served by the water system of said City; or to any other competent state or local authority in said metropolitan area in Virginia. The Secretary of the Army is hereby further authorized, in his discretion and upon the recommendation of the Chief of Engineers, and said Mayor, to permit the delivery of such water through the water mains of Arlington County by a connection to Arlington mains at the southerly end of Chain Bridge, or to make connections with the Arlington County water system at 1 or more points along the boundary line of Arlington County; provided, that all expense of installing any such connection or connections or other appurtenances and any subsequent changes therein shall be borne by said City of Falls Church, or such other communities of said metropolitan area requesting such services; provided further, that all payments for water taken directly from the mains of the water supply system of the District of Columbia at the Dalecarlia Filtration Plant, or from other points on said water system, shall be made at such time and in such manner as the Secretary of the Army and said Mayor may prescribe; all such payments to be deposited in the Treasury of the United States as other water rents now collected in the District of Columbia are now deposited, but for water as may be supplied through the water mains of Arlington County, as hereinabove authorized, such payments shall be made by said Arlington County in the same manner as payments for water supplied for the use of said Arlington County; provided further, that payment for water delivered to communities in said metropolitan area from or through the water mains of Arlington County shall be made to said County as may be mutually arranged on an equitable basis and as approved by the Secretary of the Army and said Mayor; and provided further, that the Secretary of the Army, directly or upon the request of the Mayor, may revoke at any time any permit for the use of said water that may have been granted.

(June 26, 1947, 61 Stat. 181, ch. 149, § 1.)

Section references. — This section is referred to in § 34-2411.03.

Prior Codifications. — 1981 Ed., § 43-1541.

1973 Ed., § 43-1531a.

References in text. — The title of Secretary of War was changed to Secretary of the Army by § 205(a) of the Act of July 26, 1947, 61 Stat. 501, ch. 343. Section 205(a) of the Act of July 26, 1947, was repealed by § 53 of the Act of August 10, 1956, 70A Stat. 641, ch. 1041.

Editor's notes. — Restriction on use of funds: Section 136 of Pub. L. 102-382, 106 Stat. 1435, the District of Columbia Appropriations Act, 1993, provided that none of the funds made available in this Act may be used by the District of Columbia to impose, implement, collect, administer, transfer, or enforce a payment in lieu of taxes on the Water and Sewer Utility Administration that would increase payments required of suburban jurisdictions in Maryland or Virginia under the Blue Plains Intermunicipal Agreement of 1985.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2411.02. Investigation of distribution systems outside District of Columbia.

The Secretary of the Army, through the Chief of Engineers, shall have the right at all times to investigate the distribution systems of any community outside the District of Columbia supplied with water from the said District of Columbia water system and if, in his opinion, there is an excessive wastage of water, he shall have the right to curtail the supply to said communities to the amount of such wastage.

(June 26, 1947, 61 Stat. 182, ch. 149, § 2.)

Prior Codifications. — 1981 Ed., § 43-1542.

1973 Ed., § 43-1531b.

§ 34-2411.03. Acquiring of lands for pipelines authorized.

The Secretary of the Army or the said Mayor of the District of Columbia is hereby authorized to acquire by purchase or condemnation all necessary lands, easements, and rights-of-way for pipelines within the District of Columbia, needed for the purposes of § 34-2411.01.

(June 26, 1947, 61 Stat. 182, ch. 149, § 3.)

Prior Codifications. — 1981 Ed., § 43-1543.

1973 Ed., § 43-1531c.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)),

appropriate changes in terminology were made in this section.

Subchapter VII. Repealed Provisions.

§ 34-2413.01. Rates. [Repealed].

Repealed.

(July 3, 1930, 46 Stat. 988, ch. 848, § 1; June 15, 1976, D.C. Law 1-70, title VI, § 601, 23 DCR 548; Mar. 5, 1981, D.C. Law 3-134, § 2, 27 DCR 4424; June 4, 1982, D.C. Law 4-112, § 3, 29 DCR 1687; June 22, 1983, D.C. Law 5-14, § 1002, 30 DCR 2632; Oct. 1, 1987, D.C. Law 7-26, § 2, 34 DCR 5074; Oct. 18, 1989, D.C. Law 8-38, § 2, 36 DCR 5752; repealed pursuant to § 301 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1522.

1973 Ed., § 43-1520.

Legislative history of Law 11-111. — Law 11-111, the "Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996," was introduced in Council and assigned Bill No. 11-102, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 7, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 31, 1996, it was assigned Act No. 11-201 and transmitted to both Houses of Congress for its review. D.C. Law 11-111 became effective on April 18, 1996.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 301 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2413.02. Nonprofit housing developments — Eligibility for rate reduction. [Repealed].

Repealed.

(June 4, 1982, D.C. Law 4-112, § 5, 29 DCR 1687; repealed pursuant to § 305 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1522.1.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2413.01.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 305 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2413.03. Nonprofit housing developments — Forgiveness of outstanding charges. [Repealed].

Repealed.

(June 4, 1982, D.C. Law 4-112, § 6, 29 DCR 1687; repealed pursuant to § 305 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1522.2.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2413.01.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 305 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2413.04. Nonprofit housing developments — Rules. [Repealed].

Repealed.

(June 4, 1982, D.C. Law 4-112, § 7, 29 DCR 1687; repealed pursuant to § 305 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1522.3.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2413.01.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 305 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2413.05. Nonprofit housing developments — Submission of willful false statements. [Repealed].

Repealed.

(June 4, 1982, D.C. Law 4-112, § 8, 29 DCR 1687; repealed pursuant to § 305 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1522.4.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2413.01.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 305 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2413.06. Nonprofit housing developments — Definitions. [Repealed].

Repealed.

(June 4, 1982, D.C. Law 4-112, § 2, 29 DCR 1687; June 11, 1992, D.C. Law 9-120, § 3, 39 DCR 3195; Feb. 5, 1994, D.C. Law 10-68, § 35, 40 DCR 6311; repealed pursuant to § 305 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1522.5.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2413.01.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 305 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2413.07. Increase. [Repealed].

Repealed.

(July 16, 1947, 61 Stat. 360, ch. 258, art. V, § 1; repealed pursuant to § 302 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1523.

1973 Ed., § 43-1520a.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2413.01.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 302 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2413.08. Council authorized to fix water rates. [Repealed].

Repealed.

(May 18, 1954, 68 Stat. 101, ch. 218, title I, § 101; Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, § 501; Jan. 5, 1971, 84 Stat. 1931, Pub. L. 91-650, title I, § 105(a); Oct. 21, 1975, D.C. Law 1-23, title VII, § 706, 22 DCR 2118; July 23, 1992, D.C. Law 9-134, § 112(e), 39 DCR 4066; Sept. 10, 1992, D.C. Law 9-145, § 113(b), 39 DCR 4895; repealed pursuant to § 303 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1524.

1973 Ed., § 43-1520c.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2413.01.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 303 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2413.09. Water and water service rates and charges. [Repealed].

Repealed.

(Oct. 21, 1975, D.C. Law 1-23, title VII, § 701(a), 22 DCR 2114; repealed pursuant to § 302 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1525.

1973 Ed., § 1520d.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2413.01.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 304 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2413.10. Additional charge on unpaid water bills. [Repealed].

Repealed.

(May 18, 1954, 68 Stat. 101, ch. 218, title I, § 102; June 13, 1990, D.C. Law 8-136, § 2(a), 37 DCR 2620; repealed pursuant to § 303 of D.C. Law 11-111.)

Prior Codifications. — 1981 Ed., § 43-1527.

1973 Ed., § 43-1521a.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2413.01.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 303 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 34-2413.11. Potomac water to be furnished to charitable institutions without charge. [Repealed].

Repealed.

(Feb. 23, 1905, 33 Stat. 742, ch. 742, § 1; repealed by D.C. Law 11-111, title III, § 306 (43 DCR 548), eff. April 18, 1996.)

Prior Codifications. — 1981 Ed., § 43-1545.

1973 Ed., § 43-1533.

Legislative history of Law 11-111. — For legislative history of D.C. Law 11-111, see Historical and Statutory Notes following § 34-2413.01.

Editor's notes. — Repeal effective 90 days after meeting of Board: Section 306 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

SUBTITLE VII. MISCELLANEOUS.

CHAPTER 25. PRIVATE CONDUITS.

Sec.
34-2501. Conditions under which private conduits may be laid.
34-2502. Penalty for refusal to remove conduits.
34-2503. Right to alter, amend, or repeal reserved.
34-2504. Construction of tunnels and structures in Anacostia River.

§ 34-2501. Conditions under which private conduits may be laid.

The Mayor of the District of Columbia is hereby authorized to grant permission to lay conduits for the transmission of electric power and pipes for the transmission of steam in alleys in the District of Columbia, under the following conditions, namely:

(1) The conduits or pipes shall be laid entirely within a square or block, and shall not cross or enter any avenue, street, or highway.

(2) The conduits and pipes shall be located as directed by said Mayor and be laid under his inspection; and the cost of such inspection, together with the cost of replacing all improved pavements disturbed in connection with said work, shall be paid in advance by the party desiring to lay said conduits or steam pipes.

(3) The conduits or pipes shall be used only to connect the premises owned and operated by the permittee, and no power or steam shall be supplied therefrom for any other purpose than the use of the permittee.

(4) The permittee shall not rent the conduit or pipe or any portion thereof.

(May 26, 1900, 31 Stat. 217, ch. 587, § 1.)

Prior Codifications. — 1981 Ed., § 43-1301.

1973 Ed., § 43-1301.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2502. Penalty for refusal to remove conduits.

On violation of any of the provisions or restrictions of § 34-2501 the said Mayor shall require the permittee, after 30 days notice, to abandon the use of said conduits or pipes and remove them from the alley or alleys in which they are located, and if said permittee shall neglect or refuse to remove said conduits or pipes and place the surface of the alley in good condition within 60 days after the date of said notice, the said permittee shall be deemed guilty of

a misdemeanor, and shall be liable to a fine of $10 for each and every day that said conduits or pipes are allowed to remain in the alley, or the said alley shall remain out of repair, which fine shall be recovered in the Superior Court of the District of Columbia, in the name of said District, as other fines and penalties are now recovered in said Court.

(May 26, 1900, 31 Stat. 218, ch. 587, § 2; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Section references. — This section is referred to in § 34-2503.

Prior Codifications. — 1981 Ed., § 43-1302.

1973 Ed., § 43-1302.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 34-2503. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal §§ 34-2501 and 34-2502.

(May 26, 1900, 31 Stat. 218, ch. 587, § 3.)

Prior Codifications. — 1981 Ed., § 43-1303.

1973 Ed., § 43-1303.

§ 34-2504. Construction of tunnels and structures in Anacostia River.

The Secretary of the Army is authorized to permit the construction and operation of any intake and discharge tunnels and/or other structures in the Anacostia River insofar as they affect navigable waters of the United States; and the Director of National Park Service is authorized, in consideration of the above mentioned quitclaims to the United States, to convey, on behalf of the United States, to the owners of square 667 that portion of square east of 667 lying west of the direct southerly projection of the west line of Half Street as existing on June 15, 1932, north of U Street Southwest; and said Director of National Park Service is authorized to permit the construction and operation of any pipelines and intake and discharge tunnels, upon such terms and conditions as shall be fair and reasonable, under and on any lands owned or claimed by the government of the United States lying in the above area and/or between the east line of Water Street, or other streets, and the Anacostia River. All areas conveyed by the United States to the owners of square 667 shall thereafter be assessed on the books of the Assessor of the District of Columbia the same in all respects as other private properties in the District of Columbia.

(June 15, 1932, 47 Stat. 319, ch. 265, § 4.)

Prior Codifications. — 1981 Ed., § 43-1304.

1973 Ed., § 43-1304.

References in text. — The Director of Public Buildings and Public Parks of the National Capital was changed to the Director of National Parks, Buildings and Reservations by Executive Order No. 6166, dated June 10, 1933. This in turn was changed to the Director of National Park Service by the Act of March 2, 1934, 48 Stat. 389, ch. 38, § 1.

Editor's notes. — Office of Assessor abolished: The Office of the Assessor was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Assessor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, abolished the Office of the Assessor and transferred the functions to the Finance Office in the Department of General Administration. The same Order provided that an Office of the Assessor would be created in the Finance Office. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officers, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) shall continue under the direction and control of the Director of General Administration, and prescribed the functions thereof. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. The Office of Budget and Financial Management was replaced by Organization Order No. 50, dated December 31, 1974, which Order established the Office of Budget and Management Systems. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1979, which Order established the Office of Budget and Resource Development.

CHAPTER 26. PUBLIC UTILITY ENVIRONMENTAL IMPACT STATEMENT REQUIREMENTS.

Sec.
34-2601. Purpose.
34-2602. Definitions.
34-2603. Environmental impact statement requirements.
34-2604. Rules.

§ 34-2601. Purpose.

The purpose of this chapter is to protect and enhance the public health, welfare and safety of the citizens of the District of Columbia ("District") and provide for the fullest possible preservation and protection of the environment. If a public utility proposes an action, it shall prepare and transmit a detailed environmental impact statement to the Public Service Commission ("Commission"). If the Commission determines than an unacceptable risk of adverse health effects exists because of an action that is proposed by a public utility, a public utility doing business in the District of Columbia shall not construct a facility or undertake a project without a detailed and comprehensive analysis and understanding of the impact that the project or the construction or operation of the facility may have on the public health, safety, and environment. These goals require that a public utility prepare and file an environmental impact statement that complies fully with the requirements of this chapter, before application is made to the Department of Consumer and Regulatory Affairs for a permit, and subchapter V of Chapter 1 of Title 8.

(Oct. 19, 1989, D.C. Law 8-45, § 2, 36 DCR 5779.)

Prior Codifications. — 1981 Ed., § 43-1901.

Legislative history of Law 8-45. — Law 8-45, "District of Columbia Public Utility Environmental Impact Statement Requirement Act of 1989," was introduced in Council and assigned Bill No. 8-208, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-78 and transmitted to both Houses of Congress for its review.

§ 34-2602. Definitions.

For the purposes of this chapter, the term:

(1) "Action" means any project or activity proposed by a public utility that, if implemented, would be likely to have a significant effect on the quality of the environment. The term "action" shall include a new and continuing project or activity that is directly undertaken by a public utility or its agent or subsidiary, that would require the issuance of a lease, permit, license, certificate, or other entitlement for use or permission to act by the Commission. The term "action" shall not include:

(A) A project or activity of an administrative nature that does not involve an exercise of discretion;

(B) An enforcement proceeding;

(C) An emergency action that responds to an immediate threat to public health or safety;

(D) Maintenance or repair that does not involve a substantial change in an existing structure or facility;

(E) A normal extension of electric company service;

(F) The extension or replacement of a gas distribution facility;

(G) The extension or replacement of a telephone line as defined in § 34-221; and

(H) The installation, repair, or replacement of equipment or a device identified in § 34-206, with the exception of an electric generating facility or overhead transmission line of 69,000 volts and over.

(2) "Environment" means the physical conditions that will be affected by a proposed action, including the land, air, water, minerals, flora, fauna, objects of historic, health, or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood characteristics, including traffic patterns and noise levels.

(Oct. 19, 1989, D.C. Law 8-45, § 3, 36 DCR 5779; May 21, 1994, D.C. Law 10-121, § 2, 41 DCR 1653; May 9, 2000, D.C. Law 13-107, § 206, 47 DCR 1091.)

Prior Codifications. — 1981 Ed., § 43-1902.

Effect of amendments. — D.C. Law 13-107 substituted in par. (1)(E) the word "company" for "utility"

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § of Public Utility Environmental Impact Statement Electrical Temporary Amendment Act of 1993 (D.C. Law 10-23, September 30, 1993, law notification 42 DCR 7216).

Legislative history of Law 8-45. — For legislative history of D.C. Law 8-45, see Historical and Statutory Notes following § 34-2601.

Legislative history of Law 10-121. — Law 10-121, the "Public Utility Environmental Impact Statement Electrical Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 21, 1994, it was assigned Act No. 10-212 and transmitted to both Houses of Congress for its review. D.C. Law 10-121 became effective on May 21, 1994.

Legislative history of Law 13-107. — Law 13-107, the "Retail Electric Competition and Consumer Protection Act of 1999," was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

§ 34-2603. Environmental impact statement requirements.

(a) If a public utility proposes an action, it shall prepare and transmit to the Commission a detailed environmental impact statement within 60 days following the submission of the proposal. The environmental impact statement shall describe in detail the proposed action, the necessity for the proposed action, and a brief discussion of the following factors:

(1) The nature of the proposed action and the environment that the proposed action would affect;

(2) The need for the proposed action;

(3) The reasons for the selection of the site for a proposed action, if any;

(4) The long- and short-term impact of the proposed action on the environment;

(5) Any adverse environmental effect that cannot be avoided if the proposed action is implemented;

(6) Measures proposed to minimize any adverse environmental effect;

(7) Any commitment of resources involved in the proposed action;

(8) The impact of the proposed action on the use and conservation of energy resources, if applicable and significant; and

(9) Any additional information that the Commission determines to be helpful in determining the environmental impact of the proposed action.

(b) The environmental impact statement shall be considered in addition to any Department of Consumer and Regulatory Affairs' decision regarding the environmental impact of the action.

(c) For any proposed action that is subject to this chapter, including but not limited to new plant construction or the expansion of an existing plant, the public utility shall perform an analysis that identifies the cumulative risk of adverse health effects from any existing and projected emissions of pollutants from the proposed action. If the Commission determines, on the basis of the analysis and any other information submitted at any public hearing on the pending application, that the addition of the new facility may create an unacceptable risk of adverse health effects, the Commission shall require the public utility to submit the following information:

(1) An analysis and determination of the current, baseline, ambient air quality within a ½ mile radius of the proposed action that identifies the concentrations of all potentially toxic air and water pollutants emitted by the existing facility and the proposed action;

(2) An analysis of the current, baseline, health status of the population found by the Commission to be most directly affected by the construction or operation of the proposed action; and

(3) An analysis of the impact of the construction and operation of the proposed action on human health or the environment in light of the results of the analyses conducted under paragraphs (1) and (2) of this subsection.

(d) For a proposed action that is the subject of an application pending on October 19, 1989, the public utility shall prepare and submit an environmental impact statement within 30 days of October 19, 1989. To the maximum extent practicable, the statement shall rely on environmental information available on October 19, 1989. The Commission may require the public utility to submit any additional information that, in the Commission's judgment, is needed to satisfy the requirements set forth in subsection (a) of this section or to enable the Commission to make its decision concerning the reasonable safety and adequacy of the proposed facility.

(Oct. 19, 1989, D.C. Law 8-45, § 4, 36 DCR 5779.)

Prior Codifications. — 1981 Ed., § 43-1903.

Legislative history of Law 8-45. — For legislative history of D.C. Law 8-45, see Historical and Statutory Notes following § 34-2601.

§ 34-2604. Rules.

The Commission shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this chapter.

(Oct. 19, 1989, D.C. Law 8-45, § 5, 36 DCR 5779.)

Prior Codifications. — 1981 Ed., § 43-1904.

Legislative history of Law 8-45. — For legislative history of D.C. Law 8-45, see Historical and Statutory Notes following § 34-2601.

CHAPTER 27. UNDERGROUND FACILITIES PROTECTION.

Sec.
34-2701. Definitions.
34-2702. Formation and operation of 1-call center.
34-2703. Availability of permit drawings.
34-2704. Notification prior to excavation.
34-2705. Requirements of person responsible for excavation or demolition.
34-2706. Damage caused by excavation or demolition.
34-2707. Liability for damages; civil penalty.
34-2708. Mandamus or injunction.
34-2709. Emergency excavation or demolition.

§ 34-2701. Definitions.

For the purposes of this chapter:

(1) The terms "demolition" or "demolish" mean any operation by which a structure or mass of material is wrecked, razed, moved, or removed by means of any tool, equipment, or explosive.

(2) The terms "excavate" or "excavation" mean any operation in which earth, rock, or other material in or on the ground is moved, removed or otherwise displaced by means of any tool, equipment, or explosive, and include but are not limited to grading, trenching, digging, ditching, drilling, boring, augering, tunnelling, scraping, cable or pipe plowing and driving, wrecking, razing, moving, or removing any structure or mass of material.

(3) The term "one-call center" means any organization among the purposes of which is to notify 2 or more public utility operators of planned excavation activities or demolition in a specified area.

(4) The term "person" means any individual, firm, joint venture, partnership, corporation, association, agency of the District of Columbia government, or other governmental body or authority, except the United States government, and shall include any trustee, receiver, assignee, or personal representative thereof.

(5) The term "public utility operator" means a person, agency or instrumentality of the District of Columbia government, who supplies or transports any of the following materials or services by means of a utility line or conduit:

(A) Gas of any kind, including flammable, toxic, or corrosive gas;

(B) Liquids, including coal slurry, petroleum, petroleum products, or other hazardous liquids;

(C) Electric energy;

(D) Communication services;

(E) Sewage disposal and drainage;

(F) Water; or

(G) Steam.

(6) The term "underground facility" means any item of personal property which is buried or placed below ground, or submerged for use in connection with the storage or conveyance of water, sewage, electronic, telephonic, or teletype communications, electric energy, oil, gas, or other substances, and shall include, but not be limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those portions of poles located below the ground.

(7) The term "utility line" means any cable, pipeline, or other conduit installed underground by which a public utility operator furnishes materials or services.

(Mar. 4, 1981, D.C. Law 3-129, § 2, 28 DCR 264; Apr. 20, 1999, D.C. Law 12-264, § 48, 46 DCR 2118; May 23, 2000, D.C. Law 13-114, § 2(a), 47 DCR 1993.)

Prior Codifications. — 1981 Ed., § 43-1701.

Effect of amendments. — D.C. Law 13-114 in subd. (5) rewrote the introductory text which previously read:

"The term 'public utility operator' means a person, other than an agency of the District of Columbia, who supplies or transports any of the following materials or services by means of a utility line:"; and rewrote subpar. (B), which previously read:

"(B) Liquids other than water, including such liquids as coal slurry, petroleum, petroleum products, or other hazardous liquids;"; and following "(G) Steam", deleted "Except, that the District of Columbia government shall not be included."

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Utility Line Temporary Act of 2008 (D.C. Law 17-301, March 20, 2009, law notification 56 DCR 3012).

Emergency legislation. — For temporary (90 day) provisions, see § 2 of Utility Line Emergency Act of 2008 (D.C. Act 17-568, November 3, 2008, 55 DCR 12110).

Legislative history of Law 3-129. — Law 3-129 was introduced in Council and assigned Bill No. 3-240, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 25, 1980 and December 9, 1980, respectively. Signed by the Mayor on January 7, 1981, it was assigned Act No. 3-338 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 13-114. — Law 13-114, the "Underground Facilities Protection Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-278, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on January 4, 2000, and February 1, 2000, respectively. Signed by the Mayor on February 18, 2000, it was assigned Act No. 13-267 and transmitted to both Houses of Congress for its review. D.C. Law 13-114 became effective on May 23, 2000.

§ 34-2702. Formation and operation of 1-call center.

(a) All public utility operators doing business or having underground facilities in the District of Columbia shall form and operate a one-call center for the mutual receipt of notification of proposed excavation or demolition operations within the District of Columbia. The one-call center, to which notification concerning proposed excavation or demolition should be directed, shall file with the District of Columbia Department of Transportation the telephone number and address of such center, and a list of the name and address of each public utility operator participating in the operation of the center.

(b) All agencies or instrumentalities of the District of Columbia, including the Water and Sewer Authority, owning, leasing, maintaining, or otherwise possessing an interest in underground facilities shall join and participate in the one-call center. The name and address of each District agency or instrumentality participating in the operation of the one-call center shall be included in the list transmitted by the one-call center to the District of Columbia Department of Public Works.

(c) The one-call center shall be referred to as District One Call, abbreviated for convenience purposes as "DOC".

(Mar. 4, 1981, D.C. Law 3-129, § 3, 28 DCR 264; May 23, 2000, D.C. Law 13-114, § 2(b), 47 DCR 1993.)

Prior Codifications. — 1981 Ed., § 43-1702.

Effect of amendments. — D.C. Law 13-114 designated the existing text as subsec. (a), and added subsecs. (b) and (c).

Legislative history of Law 3-129. — For legislative history of D.C. Law 3-129, see Historical and Statutory Notes following § 34-2701.

Legislative history of Law 13-114. — For Law 13-114, see notes following § 34-2701.

Transfer of Functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 34-2703. Availability of permit drawings.

The District of Columbia Department of Transportation shall make available to each public utility operator a copy of all approved permit drawings, including those which bear the exact nature and location of all excavation to be carried out, as they are issued to persons for excavation or demolition in public space where utility facilities exist. Applicants for permits will provide additional copies of plans as required for this purpose.

(Mar. 4, 1981, D.C. Law 3-129, § 4, 28 DCR 264.)

Prior Codifications. — 1981 Ed., § 43-1703.

Legislative history of Law 3-129. — For legislative history of D.C. Law 3-129, see Historical and Statutory Notes following § 34-2701.

Legislative history of Law 13-114. — For Law 13-114, see notes following § 34-2701.

Transfer of Functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 34-2704. Notification prior to excavation.

(a) Except as provided in § 34-2709, no person shall excavate in a street, highway, public space, or on private property, or demolish a building without first notifying, by telephonic or teletype, at least 48 hours, but not more than 10 days (excluding Saturdays, Sundays, and legal holidays), prior to the commencement of the proposed excavation or demolition, each public utility operator which may have underground facilities in the area of the proposed excavation. Such telephonic or teletype notification shall be accomplished by notifying the one-call center within the time limit prescribed, which shall in turn notify the appropriate public utility operators.

(b) The telephonic or teletype notice required by subsection (a) of this section must contain the name, address, and telephone number of the person responsible for the proposed excavation or demolition, the utility job number, the planned starting date, the anticipated duration, the type of excavation or demolition work to be conducted, the location of the proposed excavation or demolition, with a maximum length per notice of 1,320 feet, and whether or not explosives are to be used.

(c) If it is determined by a public utility operator that a proposed excavation or demolition is planned in such proximity to an underground facility that the facility may be damaged, dislocated, or disturbed, the public utility operator shall within 48 hours (excluding Saturdays, Sundays, and legal holidays) respond by marking, staking, locating, or otherwise providing the approximate location of the public utility operator's underground facilities.

(d) When the actual excavation or demolition operation enters the immediate vicinity of an underground facility or utility line transporting natural gas, the person responsible for the excavation or demolition shall expose the underground facility or utility line by hand digging; provided, that a test pit hand dug by the District government, which locates the utility line, shall meet the requirements of this subsection. For purposes of this subsection, the immediate vicinity of the underground facility or utility line shall be defined as a space within 18 inches from the nearest point on the underground facility.

(e) If the public utility operator, notified by the one-call center, determines that its underground utility lines or facilities will not be affected by the excavation or demolition, the public utility operator shall advise the person who proposes to excavate or demolish that marking is unnecessary.

(f) No person shall begin excavation prior to the notification of each public utility operator through the one-call center, or prior to the marking required by this section, or prior to the determination by the public utility operator that marking is unnecessary.

(g) The notification through the one-call center is valid for 15 days excluding Saturdays, Sundays, and legal holidays, from the time of notification to the one-call center. Three days before the end of the 15-day period, or at any time when line-location markings on the ground become illegible, the person excavating shall contact the one-call center and request the re-marking of the lines. The public utility operator shall re-mark the lines as soon as possible. However, the re-marking of the lines shall be completed within 48 hours from the time of the request.

(Mar. 4, 1981, D.C. Law 3-129, § 5, 28 DCR 264; May 23, 2000, D.C. Law 13-114, § 2(c), 47 DCR 1993.)

Section references. — This section is referred to in §§ 34-2705 and 34-2709.

Prior Codifications. — 1981 Ed., § 43-1704.

Effect of amendments. — D.C. Law 13-114 in subsec. (b) substituted "the location of the proposed excavation or demolition, with a maximum length per notice of 1,320 feet," for "the location of the proposed excavation or demolition," and added subsec. (g).

Legislative history of Law 3-129. — For legislative history of D.C. Law 3-129, see Historical and Statutory Notes following § 34-2701.

Legislative history of Law 13-114. — For Law 13-114, see notes following § 34-2701.

Editor's notes. — Near the beginning of the first sentence of subsection (a), the reference to § 34-2709 was substituted for a reference to § 43-1710 1981 Ed., to correct an error in D.C. Law 3-129.

§ 34-2705. Requirements of person responsible for excavation or demolition.

(a) In addition to the requirements of § 34-2704, each person responsible for an excavation or demolition operation shall:

(1) Plan the excavation or demolition to avoid damage to or minimize interference with underground facilities in and near the construction area;

(2) Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, taking into account the known limit of control of such cutting edge or point as may be reasonably necessary to avoid damage to such underground facility; and

(3) Provide such support for underground facilities in and near the construction area, including support during backfilling operations, as may be reasonably necessary for the protection of such facilities.

(b) If a facility is damaged, under no circumstances shall a contractor backfill an excavation without first receiving permission from the utility operator whose facility was damaged.

(c) Nothing in this chapter shall excuse the failure to obtain a permit to excavate in public space in compliance with § 9-431.01.

(d) Persons and operators excavating for routine maintenance, including patch-type paving, will not be required to comply with the notification and marking procedures of this chapter, if they excavate within the limits of the original excavation, and if the excavation does not exceed 12 inches in depth below the grade existing prior to said excavation.

(Mar. 4, 1981, D.C. Law 3-129, § 6, 28 DCR 264.)

Prior Codifications. — 1981 Ed., § 43-1705.

Legislative history of Law 3-129. — For legislative history of D.C. Law 3-129, see Historical and Statutory Notes following § 34-2701.

CASE NOTES

In general.

Telephone company established prima facie case of violation of Underground Facilities Protection Act (UFPA) by proving that construction company drove spikes into telephone company's clearly marked underground cables during course of excavation and reconstruction project. D.C. Code 1981, §§ 43-1705(a), 43-1707(a). Bell Atlantic-Washington v. Nazario Constr. Co., 716 A.2d 191, 1998 D.C. App. LEXIS 149 (1998).

§ 34-2706. Damage caused by excavation or demolition.

(a) Except as provided in subsection (b) of this section, each person responsible for any excavation or demolition operation which results in damage to an underground facility shall, immediately upon discovery of such damage, notify the operator of such facility of the location and the nature of the damage, and shall allow the operator reasonable time to accomplish necessary repairs before continuing the excavation or demolition in the immediate area of the damaged facility.

(b) Each person responsible for any excavation or demolition operation that results in damage to an underground facility, permitting the escape of any flammable, toxic, or corrosive gas or liquid shall, immediately upon discovery of such damage, notify the public utility operator, the Metropolitan Police Department, and the District of Columbia Fire Department, and shall take any other action which may be reasonably necessary to protect persons and property.

(Mar. 4, 1981, D.C. Law 3-129, § 7, 28 DCR 264.)

Prior Codifications. — 1981 Ed., § 43-1706.

Legislative history of Law 3-129. — For legislative history of D.C. Law 3-129, see Historical and Statutory Notes following § 34-2701.

§ 34-2707. Liability for damages; civil penalty.

(a) If any underground facility is damaged through the fault of any person, that person shall be liable to the owner of the underground facility for the total cost of the repair or, if necessary, the replacement of the damaged underground facility.

(b) If any underground facility is damaged by any person carrying out excavation or demolition without having complied with the notice provisions of this chapter, that person shall be liable to the owner of the underground facility for treble the cost of the repair or replacement of the damaged underground facility.

(c) Any person who violates any provision of this chapter shall be subject to a civil penalty of $2,500 for the first violation, $3,500 for the second violation, and $5,000 for the third or subsequent violation. Action to recover the civil penalties provided for in this section shall be brought by the Corporation Counsel of the District of Columbia in the Superior Court of the District of Columbia. All penalties recovered from such action, including reasonable attorney's fees, shall be paid into the General Fund of the District of Columbia.

(Mar. 4, 1981, D.C. Law 3-129, § 8, 28 DCR 264; May 23, 2000, D.C. Law 13-114, § 2(d), 47 DCR 1993.)

Prior Codifications. — 1981 Ed., § 43-1707.

Effect of amendments. — D.C. Law 13-114 in subsec. (c) substituted "of $2,500 for the first violation, $3,500 for the second violation and $5,000 for the third or subsequent violation" for "not to exceed one thousand dollars ($1,000) for each such violation".

Legislative history of Law 3-129. — For legislative history of D.C. Law 3-129, see Historical and Statutory Notes following § 34-2701.

Legislative history of Law 13-114. — For Law 13-114, see notes following § 34-2701.

CASE NOTES

In general.

Telephone company established prima facie case of violation of Underground Facilities Protection Act (UFPA) by proving that construction company drove spikes into telephone company's clearly marked underground cables during course of excavation and reconstruction project. D.C. Code 1981, §§ 43-1705(a), 43-1707(a). Bell Atlantic-Washington v. Nazario Constr. Co., 716 A.2d 191, 1998 D.C. App. LEXIS 149 (1998).

§ 34-2708. Mandamus or injunction.

If any person proposes to engage or is engaging in excavation or demolition in the District of Columbia without complying with this chapter, or in a negligent or unsafe manner, or by using a procedure which has resulted in, or is likely to result in, damage to an underground facility, the owner of such underground facility or the Corporation Counsel may commence an action in

the Superior Court of the District of Columbia, for the purpose of having such negligent or unsafe excavation or demolition stopped and prevented, by either mandamus or injunction. The Court may join as parties any persons necessary or proper to make its judgment or process effective and, if appropriate, shall issue a final order granting such relief.

(Mar. 4, 1981, D.C. Law 3-129, § 9, 28 DCR 264.)

Prior Codifications. — 1981 Ed., § 43-1708.

Legislative history of Law 3-129. — For legislative history of D.C. Law 3-129, see Historical and Statutory Notes following § 34-2701.

§ 34-2709. Emergency excavation or demolition.

Compliance with the notice requirements of § 34-2704 shall not be required for an emergency excavation or demolition involving an imminent danger to life, health, or property; provided, that reasonable precautions have been taken to protect underground facilities. The appropriate public utility operators shall, in any event, be notified directly and as soon as possible. An imminent danger to life, health, or property exists whenever there is a substantial likelihood that loss of life, health, or property will result before the procedures under § 34-2704 can be fully complied with.

(Mar. 4, 1981, D.C. Law 3-129, § 10, 28 DCR 264.)

Section references. — This section is referred to in § 34-2704.

Prior Codifications. — 1981 Ed., § 43-1709.

Legislative history of Law 3-129. — For legislative history of D.C. Law 3-129, see Historical and Statutory Notes following § 34-2701.